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THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: November 18, 2008

REPORT NO 08-176

ATTENTION: Council President and City Council
Docket of November 24, 2008

SUBJECT: Mills Act Program Reforms and Cost Recovery Fees

REFERENCE: Planning Department Budget Hearing of June 13, 2005; Land Use and
Housing Committee Hearing of June 21, 2006; Historical Resources Board
Hearing of July 24, 2008

REQUESTED ACTION:

Adopt a series of amendments to Council Policy 700-46, "Mills Act Agreements for Preservation of Historic Property," to reform the City's Mills Act Program and provide improved accountability and annual fiscal thresholds for new agreements (Attachment 1); and establish fees associated with historical resources nomination and Mills Act Program components to provide full recovery of staff costs (Attachment 2).

STAFF RECOMMENDATIONS:

1. Approve the following Mills Act Program reforms:
 - Add a fiscal threshold of \$100,000 new tax revenue reduction to general fund on an annual basis
 - Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported
 - Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year
 - Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation
 - Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements
2. Establish cost-recovery fees for:
 - public nominations of individual properties submitted for historic designation pursuant to Land Development Code (LDC) Section 123.0202(a);
 - Mills Act Program agreement (revised fee);
 - Mills Act Program monitoring; and,
 - Mills Act Program enforcement.

3. Apply the Program reforms and new fees to pending and future nominations and Mills Act Program agreements and the monitoring and enforcement fees to existing and future Mills Act Program agreements.
4. Do not adopt fees for processing nominations of historic districts but apply the same Mills Act Program reforms and the agreement, monitoring and enforcement fees to designated historical resources within Districts.

SUMMARY:

BACKGROUND

The Mills Act was enacted in 1972 by the State of California to enable local jurisdictions "to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief" (see Attachment 3). The San Diego City Council adopted Council Policy 700-46 in 1995 "to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego" (Attachment 4). The City's first Mills Act agreement was recorded in 1995. During the past 12 years the number of agreements has increased substantially and the program is the most active one within the State. As of the 2007 tax assessment, there are 901 effective Mills Act agreements for historic properties within the City.

Current Mills Act Program

The Mills Act Program agreement is a legal contract binding the owner of a designated historical resource to maintain the subject property consistent with the U.S. Secretary of the Interior's Standards, to provide visibility of the historical resource from the public right-of-way, and to improve or rehabilitate the property based on specific conditions included in the agreement. The agreement is recorded with the County which allows the Assessor to determine the property tax, based on a formula set in State Law that typically results in a substantial annual savings to the property owner. The average savings is 50 percent with a range of property tax reduction between 25 percent and 75 percent. This tax benefit, authorized by the State of California in Government Code Sections 50280-50290, has been available since 1995 and is authorized by Council Policy 700-46, "Mills Act Program Agreements for Preservation of Historic Property." This property tax reduction is the one financial incentive that can be offered citywide, excluding some redevelopment areas, to property owners of qualified properties as an incentive to maintain their designated historical resources. Other incentives may be available within redevelopment areas.

When the Mills Act Program was set up in 1995, a monitoring system was not established. The Mills Act Program agreement is entered into for a period of ten years, with automatic renewal each year unless one of the parties proposes to end it. The City of San Diego may propose to end the Mills Act Program agreement if the property is not maintained in accordance with the U.S. Secretary of the Interior's Standards, or if other contract provisions are not met. Mills Act Program agreements that were entered early into the program have now existed for 12 years.

With a Mills Act Program agreement, the loss of tax revenue to the City is offset by the public benefit of preservation of our important historical resources. Maintaining the significant character defining features of historic properties through a Mills Act Program Agreement is a

keystone of the overall program. In order to assure a Mills Act property is maintained as required by the Mills Act Program Agreement, periodic monitoring is necessary. Although alterations to designated historical resources are subject to regulation by the LDC, unauthorized alterations do occur. These are typically brought to the attention of code enforcement staff only if a neighbor or other community member reports the work.

Fees

The City of San Diego generally charges a fee to a property owner for services specific to their property. There is currently a maximum fee of \$400 required from the property owner to process a Mills Act Program agreement. This fee is determined by the property value and does not sufficiently recover the cost to the City for this work. Designation of a property as a historical resource is a required prerequisite for an owner seeking a Mills Act Program agreement. A number of specific tasks are required to process the nomination and then the agreement.

- The San Diego Municipal Code allows any member of the public or any City agency to nominate a property for designation as a historical resource.
- The nomination and designation process begins with submittal of a historical resource research report addressing the significance of the resource and how it meets any of the six adopted designation criteria.
- The report is reviewed by Historical Resources staff; the property is visited by staff to photograph and confirm its condition; a staff report to the Historical Resources Board (HRB) is prepared; and, a public hearing is held by the HRB to consider the merits of the designation request.
- If the property is designated as a historical resource by the HRB, and other conditions are met, the property owner is entitled to enter into a *Mills Act Program agreement* with the City.
- The cost to process these voluntary nominations is currently absorbed by the General Fund.
- There is currently no formal Mills Act monitoring program in place and no fee in place to cover the City's cost of monitoring.
- Major violations of Mills Act agreements are expected to occur in only a few instances. However, if violations of a Mills Act Program agreement do occur, the City must require a remedy and there is no fee in place to cover the cost of enforcement.

Cost recovery fees for the historical designation process and the processing, monitoring and enforcement of Mills Act agreements are included in this proposal. The issue of cost recovery fees for the designation and Mills Act program components has been under review for more than two years. A formal proposal was taken to the Land Use and Housing Committee in 2006.

Land Use and Housing Committee Direction

On June 21, 2006, the LU&H Committee reviewed the issue of fees for nominations of historical resources and Mills Act Program Agreements (Attachment 5). Testimony was presented both in support of the proposed fees and in opposition. Support was expressed by the Chair of the HRB, community activists, historical consultants, and land use attorneys, with many speakers recommending the need for a fee exemption for those who may be unable to pay. The speakers

in opposition included historical resources consultants and a representative of Save Our Heritage Organization (SOHO). These speakers all felt that a full cost recovery fee would be a deterrent to homeowners nominating their own property for designation and taking advantage of the Mills Act incentive. Most opposition speakers suggested a nominal fee of \$500 or less. A sliding scale and payment at the end of the process, rather than prior to staff work on the nomination, was also suggested. LU&H Committee members discussed the need for City programs to pay for themselves and the high overall satisfaction the public has with the historical resources program and recognized the benefit of the important Mills Act incentive. There was concern whether a fee would discourage homeowners, especially in areas already underrepresented by designated historical resources or lower income neighborhoods. The timing of the fee and a way to provide an exception in specified circumstances was also discussed. The LU&H Committee forwarded the issue of fees for nominations of historical resources and the Mills Act Program to the full City Council without a recommendation but with direction for staff to develop options related to the timing of a fee, and a way to accommodate those property owners who cannot afford to pay the fee. The issue of fees is now coming forward as part of the overall Mills Act reform package.

Review of Current Program

Review of the City's Mills Act program began in 2004 with a focus on changing the fee structure that would provide sufficient revenue to the City to pay the cost of the service being offered in preparation and monitoring of Mills Act agreements. This initial review of the program included an acknowledgement by the City that sufficient monitoring and inspection of Mills Act properties was not occurring. The fee structure developed at that time included the costs for staff time to monitor existing Mills Act properties along with time to prepare new agreements.

As part of the review of the City's current process, staff researched how other California cities and counties implement the Mills Act. A number of cities, large and small, throughout the State were contacted to obtain information about their programs. Categories of information included numerical limits, eligibility requirements, application deadline, contract requirements, inspection requirements, and fees. The data was compiled and compared to the City's program. Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City's program was presented to the Policy Subcommittee in January 2008 (Attachment 6a). This early draft proposal addressed such issues as an annual limit to the number of new Mills Act agreements, increased eligibility requirements to participate in the program, an earlier application deadline, expanded requirements of the agreement, monitoring of agreements, and fees.

There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor's office following the meeting. Opposition to any changes to the current program was strongly expressed by those individuals in attendance and through numerous phone calls, emails and letters to the City. Staff continued to research other jurisdictions' programs and refine the proposed changes, considering public input and the City's desire to increase the effectiveness of the program and assure compliance with performance requirements. A slightly revised proposal was presented to the Community Planners Committee in March 2008 (Attachment 6b). Again, concern about the proposed changes was expressed.

In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April 2008 and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed strong opposition to specific changes being proposed, particularly any limit to the number of new contracts and any new eligibility requirements. However, there was some general agreement with changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees.

In July 2008, the HRB held a public hearing on the proposed Mills Act reforms (Attachment 7). As with previous workshops, every owner of a designated historic property or of a nominated property, historic consultants, preservation organizations, and others who had expressed interest were notified by mail of the hearing. In addition to the Historical Resources staff presentation of the revised proposal to reform the Mills Act program, the Statewide Mills Act Coordinator for the California Office of Historic Preservation (OHP) presented comments on the proposal (Attachment 8). The OHP comments noted they have "... long applauded the robust nature of San Diego's Mills Act Program." And they recognize the City has "... led the state in championing this important and affective fiscal preservation incentive."

While recognizing the public's concerns for the proposed changes to the City's Mills Act Program, OHP stated that the proposed changes are in fact in line with current Mills Act policies, practices, and industry standards statewide and that the proposed changes meet the needs of the City's historic preservation goals within the framework established by the state law. Further stating, "By adopting an annual fiscal limit for new contracts, establishing eligibility criteria, instituting work schedules for restoration, rehabilitation and maintenance, and setting a timeline for routine inspections a framework will be established for a program that holds both the City and private property owners accountable for their actions with regard to Mills Act contracts. The emphasis of the proposed changes reflects a commitment to the premise that tax savings realized through a Mills Act contract should be reinvested in the historic resource, which clearly echoes the intent of the law and serves to further the goals of the active and vital preservation program in the City of San Diego." The OHP remarks concluded with a recommendation that the City "... reevaluate the new program framework and limits within the first five years in order to determine if the changes have affectively achieved the program goals and the Mills Act continues to be a strong positive tool for the preservation of San Diego's historical resources."

Throughout the public testimony, there was strong opposition to any changes in the program that would limit the number of new contracts or add eligibility requirements for new contracts and more generalized opposition to any changes in the current program. The HRB deliberated each of the proposed changes, with some Boardmembers expressing opposition to any changes but most expressing support of changes to the application deadline, requirement for a 10-year tailored contract, establishing an inspection schedule for Mills Act properties, and cost recovery fees. The Chair did not support an annual fiscal limit for new contracts and suggested that the tailored agreement could include the owner's documentation of investment of tax savings back into the property rather than adding new eligibility requirements.

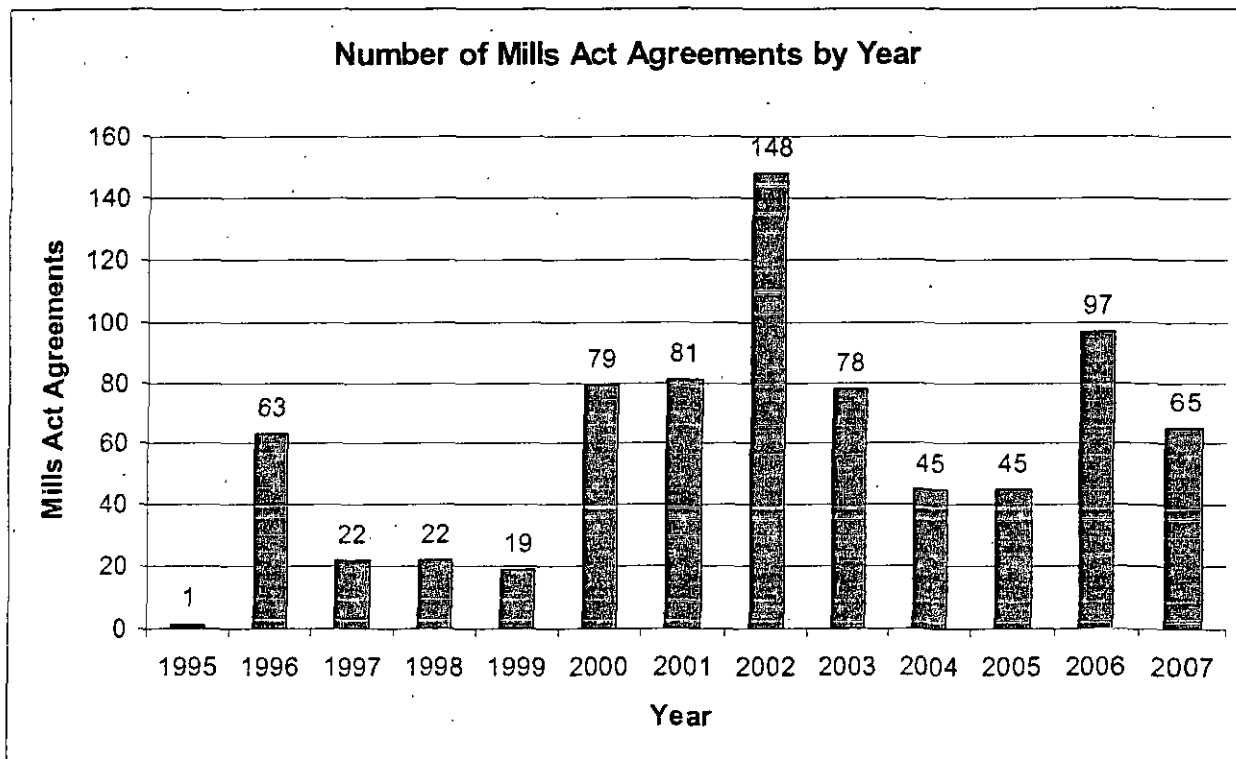
The HRB's unanimous action was to recommend to the City Council approval of the proposed changes to the application deadline, requirement for a 10-year tailored contract, establishing an inspection schedule for Mills Act properties with the provision that more detailed information concerning the scope and protocol of the inspections be prepared and brought to the Board for

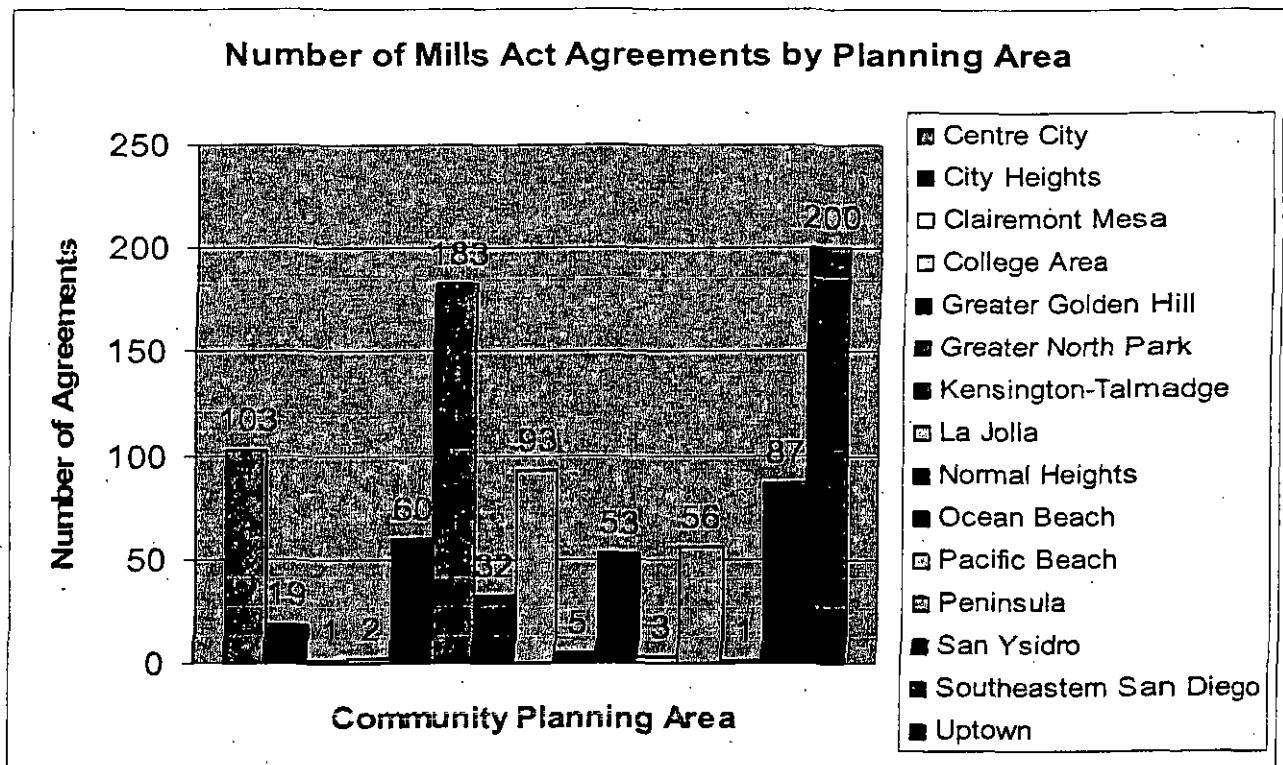
public comment and that staff report on an annual basis how many inspections have been done, and cost recovery fees with consideration of a provision for a fee waiver or reduction for low income applicants.

Following the HRB hearing in July, the Mayor and staff evaluated the proposed reforms for ways to address the public's concerns while maintaining the necessity of reforming the program by understanding and managing the reduction in property tax revenue on an annual basis, increasing accountability of the program through formal inspection and monitoring of Mills Act properties and agreements, and establishing fees that would allow the City to recover the cost of implementing the program. Attachment 9 provides a summary of the issues raised by the HRB and the public with background discussion and the Mayor's current proposed reforms, which are discussed in detail below.

DISCUSSION

Within the City of San Diego, the Mills Act Program has been an exceedingly successful incentive for historic preservation. The City executed 804 Mills Act Program Agreements from 1995 through 2007 with an additional 94 contracts automatically extended to new owners of Mills Act property that has been converted to condominium ownership, as the contract extends to the land. The public is benefiting from the increased protection of these historic properties gained under these Mills Act Program agreements. Interest in the program remains high and continues to grow, with more than 75 Mills Act Program agreements being processed during the 2008 calendar year. The number of contracts process by year is shown in the graph below, followed by a graph of the total 898 effective contracts by community planning area.





The spike in the number of contracts in 2002 is related to the designation of the Burlingame Historic District. As would be expected, the majority of Mills Act agreements have been processed for communities with the largest number of historic properties. Greater North Park, with 183 contracts includes the Burlingame Historic District while Uptown with 200 contracts reflects all individually significant historic properties.

To determine the fiscal impact to the City's General Fund from reduced Mills Act property taxes, the Tax Assessor's office provided the Prop13 property values and the Mills Act property values from the most recent assessment. The reduction in property tax revenue to the City of \$1,134,170 is determined by multiplying the tax rate (1.3359%) by the difference between the Prop 13 value and the Mills Act value (\$499,408,134) and then multiplying that difference by the City's share of property tax revenue (17%). On average, Mills Act property owners save \$7,886 in property taxes each year, with the majority 84% saving between \$1,000 and \$20,000 annually. There are about the same number of property owners saving less than \$1,000 (72) and saving more than \$20,000 (68). On average, the City's share of the reduced property tax is \$1,340 annually per Mills Act contract.

Other jurisdictions' programs are compared to the City's existing program in the table below. As can be seen, the Mills Act programs across the state are quite variable in the factors being shown. However, most of the selected cities include some type of eligibility requirements and require a rehabilitation or maintenance plan with each contract.

MILLS ACT PROVISIONS IN SELECTED CALIFORNIA CITIES

Jurisdiction	Numerical Limit	Eligibility Requirements	Application Deadline	Mills Act Requirements	Inspection Requirements	Fees
Pasadena	13 per year, soon will be 23 per year	Competitive selection process	March 31	Rehab or reinvestment required	Not in past, proposed in future	None now, may be in the future
Los Angeles	No limit	5 criteria used to assess eligibility	Early July	Rehab, restoration or maintenance	Periodic	\$25 application \$243 to execute contract
Anaheim	60 per year	Pass initial inspection	No deadlines	Determined during inspection	Annual	None
Santa Ana	No limit	Elimination of code violations and imperfections	Processed through October	Proper review and permits for all improvements	Exteriors inspected periodically	\$390
Escondido	No limit	Must meet set criteria	No deadlines	10-12 improvements over 10 years	Periodic	None
San Jose	No limit	Only top tier landmarks eligible	No deadlines	Rehab, restoration or maintenance	No formal inspection program	Sliding scale: \$640-\$2675
Long Beach	No limit, may soon be 2-4 per year	Only most significant resources	September 1	10 year improvement plan	Not in past, proposed in future	\$410 for single family houses
Existing San Diego Program	No limit	All designated properties eligible, except within Redevelopment Areas	October 1	Visibility of the resource and site specific conditions	None	\$100 for every \$100k of assessed value, up to a max of \$400

Mills Act Program Reforms

The current Mills Act Program was adopted by the San Diego City Council in July 1995 (Council Policy 700-46) as way to provide an incentive to historic property owners and bring historically significant properties under the City's authority for preservation, at time when there were no historical resources regulations. The current program is very informal with all designated historic properties located outside Redevelopment Areas eligible for Mills Act tax reduction. Specific requirements apply within Redevelopment Areas. A designated historic

property owner can request a Mills Act agreement after historical designation prior to October 1st each year. There is no formal application required.

All Mills Act agreements require visibility of the designated property from the public right-of-way and maintenance of the property in conformance with the Secretary of the Interior's Standards. Only a limited number of agreements include additional preservation or rehabilitation requirements and there is no requirement that the tax savings realized through this program be invested in the historic property. There is no formal inspection schedule or monitoring of agreements for compliance with the contract requirements.

The Mills Act Program has not been updated or modified since its initial adoption and it is the City's position that changes to the current Mills Act program are warranted for a number of reasons. Namely, the Land Development Code now includes historical resources regulations and it is understood that formal monitoring of agreements is necessary. There is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program on an annual basis. The number of annual new agreements has increased substantially since the year 2000. San Diego now has just under 900 agreements which is out of proportion with other California cities and counties compared to the number of designated resources. The City does not monitor the fiscal impact to the General Fund from the reduction in property tax income, does not require investment of tax savings in the historic property, and does not inspect or monitor the Mills Act properties to ensure compliance with the agreements. Proposed changes to the City's Mills Act Program are compared to the existing program in Attachment 10 and are discussed in more detail below.

Proposed changes to the City's program would include fiscal considerations of authorizing new Mills Act agreements by understanding the fiscal impact to the General Fund and managing this reduction in property tax revenue on an annual basis. The changes would greatly increase accountability of the program by requiring property owners to demonstrate how their tax savings would be invested into their historic property and through formal inspection and monitoring of Mills Act properties and agreements. Finally, the changes would allow the City to recover the costs of implementing the program through new and revised fees.

Annual Limit on New Agreements

There has been much concern raised by the public related to the City imposing any limit to the number of new Mills Act agreements approved annually. Earlier in 2008 an annual limit on the number of new agreements was contemplated by staff as a way of managing the fiscal impacts of the Program. It has since been determined that rather than enacting a numerical limit, a fiscal threshold related to the anticipated property tax reduction is the most appropriate way to address the fiscal implications of the Program.

Although minimal in the overall City budget, it is important to understand the fiscal impact of the program and manage it on an annual basis. To date, this analysis has not occurred and no limitation to the Program has been enacted. The current annual reduction of property tax revenue to the City's General Fund is \$1,134,170 from Mills Act property valuations, based on a total reduction in property taxes paid by Mills Act property owners of \$6,671,593. Contrary to the public's concerns, setting an annual threshold for new contracts would not eliminate the program and is not expected to significantly reduce the current level of new contracts on an annual basis. The annual average number of new contracts for the life of the program is 67, with

an annual average reduction in tax revenue to the City of \$1,340 per contract. The most recent annual averages, from 2005 through 2007, of 55 new contracts with a tax reduction of \$2,013 per contract, reflect overall increases in property values and a reduction in the average number of new contracts being processed.

Based on the need to manage the fiscal impacts of the Program, it is recommended that the City not limit the number of new agreements within a fiscal threshold of \$100,000 new tax revenue reduction to general fund on annual basis. This threshold would result in an average of approximately 50 to 75 new agreements yearly. It is also recommended that the City Council could authorize exceeding the threshold as part of the annual budget process, based on findings that the fiscal health of the City is such that additional reduction in tax revenue can be supported. If more applications were submitted in a year than could be accommodated under this threshold, and the City Council does not authorize exceeding the threshold, the property owner would have the option of applying for a Mills Act agreement in a subsequent year.

Eligibility Requirements

A number of California cities have included eligibility requirements for participation in their Mills Act programs. The City of San Diego does not have any eligibility requirements other than historical designation, which is the minimum required by State law, except within Redevelopment Areas. Earlier proposals for changes to the City's Program included eligibility requirements aligned with General Plan goals for affordability housing and with historic preservation goals. The public expressed significant concern related to any additional eligibility requirements while generally supporting the need for the Mills Act tax savings to be invested in the historic property.

This proposal recommends no new eligibility requirements for Mills Act agreements. The need for a property owner to demonstrate substantial investment of their tax savings into their historic property is recommended as a requirement for obtaining a Mills Act agreement. A discussion of this requirement is provided below.

Application Deadline

The current Program does not include a formal application process and the deadline to request an agreement is October 1st of each year. In order to allow sufficient time for the fiscal impacts of new agreements to be included in the annual City budget process, it is recommended that owners of historically designated properties would be required to submit an application for a Mills Act agreement no later than March 31 to be considered that year. The property must have been designated prior to December 31st of the previous year to allow a sufficient separation between the designation process and a subsequent Mills Act agreement. This recommendation has general support from the public, although there was concern that March 31st is too early for the deadline.

Mills Act Agreement Requirements

Currently, all Mills Act agreements require the historic building be visible from the public right-of-way to afford the public enjoyment of viewing the exterior of the resource, and require the property be maintained consistent with the U.S. Secretary of the Interior's Standards, the nationally accepted standard for the treatment of historic properties. More recently, specific

conditions related to rehabilitation or restoration of historic properties have been included in a small number of Mills Act agreements.

It is recommended that owners of designated historic properties be required to include a 10-year maintenance and rehabilitation/restoration work plan at the time of application for a Mills Act agreement. Ten years is the minimum contract length and an appropriate time frame for completion of any necessary rehabilitation or restoration work. Maintenance of the character defining features of the resource would be required to continue for the life of the contract, which is automatically renewed on an annual basis, unless non-renewal is requested by one of parties.

As part of this required 10-year work plan, the property owner would be required to demonstrate that the requested Mills Act agreement would result in a substantial investment of the anticipated tax savings into the designated historic property, including the costs of rehabilitation or restoration work, consistent with the Standards, that was necessary for the property to be eligible for historic designation.

This requirement could be met by an owner showing that a substantial portion of their anticipated property tax savings would be invested in the historic property over time. An estimate of the property tax savings from the County Tax Assessor's office and a cost estimate of needed maintenance, repairs and/or rehabilitation work would be needed. It is anticipated that most historic property owners would be able to meet this contract requirement.

Inspection Schedule

While there is a responsibility on the part of the property owner to maintain the historical significance of their designated resource, there is also a responsibility on the part of the City to assure that a property remains in compliance with the Mills Act Program agreement, since property owners receive annual tax relief intended to assist with appropriately maintaining their property. Staff believes there is a critical need to implement a monitoring program to assure compliance with Mills Act Program agreement provisions and preservation of designated properties.

Specifically, a monitoring program would primarily entail site visits, records maintenance, and staff review of compliance with contract requirements on a five-year basis. This level of monitoring would allow contact with a new owner, if there has been a change in ownership, to explain the responsibilities and provisions under the Mills Act Program agreement, since the historical designation and Mills Act Program agreement run with the property. It would also provide adequate review in cases where owners make changes that may negatively affect the property's historical integrity but do not typically require a building permit, or where owners make substantial changes to the property without obtaining the required permit.

A formal schedule for inspections and monitoring of Mills Act properties would be established by staff and conducted to assure compliance with the provisions of the agreement. Staff would work with property owners to remedy any problems identified through the inspection process. A maintenance and/or rehabilitation/restoration plan may be prepared as part of a renewal of an agreement to assure the necessary remedy.

Pipeline Provisions for Mills Act Program Reforms

Pipeline provisions for those pending historic designations awaiting review and action by the HRB have been discussed throughout the review process for proposed changes to the Mills Act Program. Concerns expressed by these property owners is that they contracted for historical consulting services and submitted a nomination report to the City in order to obtain the necessary historic designation required to participate in the Mills Act tax reduction program and the proposed Mills Act reforms could change their ability to participate in the program. The greatest concern was expressed relative to the City enacting limits on the number of contracts and adding new eligibility requirements. As discussed above, no annual limits are proposed and the fiscal threshold would accommodate the average number of annual new contracts based on past performance of the program. Additionally, the City Council would be able to exceed the threshold under certain circumstances. Likewise, no new eligibility requirements are proposed and it is anticipated that most if not all historic property owners can demonstrate substantial investment of their tax savings into the historic property. Therefore, staff does not believe pipeline provisions for the currently proposed revisions to the Mills Act Program are warranted and proposes that the reforms proposed with this action become effective with the new calendar year.

Proposed Fees

The Mayor's proposed reforms include establishing a fee that recovers costs for professional and administrative staff time involved in processing individual historic designation nominations and in processing and executing Mills Act Program agreements and their monitoring and enforcement.

The City of San Diego generally charges a fee to a property owner for services specific to their property. No fee is currently charged for the processing of a historical nomination. Between 1967, when the HRB was first established, and 1995, when Mills Act Program agreements were authorized by the City Council, approximately 326 individual properties or districts were designated as historical resources in the City. These designations were generally a result of a historical property being proposed for demolition or substantial alteration coming to the attention of the HRB or Historical Resources staff, with the City initiating the nomination. Since 1995, more than 1,050 individual properties or district contributors have been designated as historical resources, with the majority of these nominations, particularly in the last few years, voluntarily coming from property owners seeking designation in conjunction with the benefits of Mills Act tax reductions. It should be noted that nominations for historical designation that are referred to the HRB through the ministerial or discretionary review process from Development Services are fully charged for costs associated with the Historical Resources Staff review and processing of the nomination.

Under Council Policy 700-46, the initial fee for processing the Mills Act Program agreement was set very low, to encourage participation in the program by property owners. Council Policy 700-46 established a fee of \$100 per \$100,000 of assessed property valuation for processing a Mills Act Program Agreement, though the City Manager's staff capped the fee at \$400. Government Code Section 50281.1 allows local jurisdictions to "... require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program."

Throughout the process of preparing this proposal, staff has diligently analyzed average/typical time and costs associated with the processing of voluntary nominations and Mills Act Program Agreements to identify an appropriate fee amount. Additionally, following the June 2006 LU&H Committee hearing, staff reassessed the proposed fees to address public comment that the nomination fee was too high and may chill the public's interest in historic preservation or may make historical designation inaccessible to certain income groups. The current fee proposal incorporates both increased salaries previously negotiated with the labor union and reduced processing time resulting from increased efficiencies for processing individual historical designation nominations. Staff reevaluated the Mills Act components and determined that a higher level of effort would be required, with an emphasis on monitoring and enforcing the provisions of Mills Act Program agreements, in order to adequately ensure appropriate maintenance and treatment of historically designated properties.

The proposed fee of \$2,267 consists of the following: \$1,185 for the historic designation process; \$590 for the Mills Act Program agreement process; and \$492 to be assessed for monitoring with the initial Mills Act Program agreement and every five years thereafter (see Attachments 11A, 11B, 11C). The nomination fee of \$1,185 is due upon submittal of the nomination. The Mills Act Program Agreement fee of \$590 is due with the property owners request for a Mills Act Program agreement following the historic designation. The Mills Act Program monitoring fee of \$492 is due upon submittal of a signed and notarized Mills Act Program agreement submitted by the property owner. An enforcement fee of \$949 is also proposed for those expected rare instances when a Mills Act agreement has been breached by the owner and remedies for violations are sought (Attachment 11D). This fee would be required as part of an enforcement action to recover associated City costs.

- **Individual Historical Resource Nomination Fee of \$1,185 (see Attachment 11A):** Currently the entire cost of processing an individual historical nomination request is absorbed by the General Fund. Since this process is a service to individual property owners, staff recommends establishing a fee that recoups the average/typical cost of processing a voluntary nomination. The fee would cover direct costs of City staff to accept, review and analyze reports, conduct a site visit, and take to an HRB hearing each request for designation. The fee would also cover the costs of required document preparation that must be performed for each site upon designation by the HRB.

It should be noted that the applicable LDC section allows an application by any member of the public, not just by the property owner. Therefore, this fee would be charged to the actual person or persons submitting the nomination (e.g., neighbors submitting each others' residences as well as individuals or historical societies submitting someone's property without the owner's support - both rare exceptions to the voluntary nature of this program).

Issues with the fee proposal are expressed through a letter from the SOHO, (see Attachment 12). A meeting was held in May 2006, and many of the same issues arose as from a May 2004 meeting. Staff took these recommendations seriously; however, after reviewing the current fiscal situation and conferring with the City Attorney's office, staff cannot support any of these alternative fee proposals. Additionally, in public meetings where the proposed fee was discussed, there was concern expressed about the negative impact on the ability for individuals or organizations to make nominations that would

benefit the general public interest and that the cost may be prohibitive to some. Staff further reviewed these concepts and, although it is acknowledged that a full cost recovery fee may result in a disincentive to designation and may make the program unavailable to all income groups, the possibility of establishing an exemption to the fee or sliding scale, based on property value, cannot be supported.

It was too difficult to identify those circumstances that could be granted an exemption; however, there would be no cost if a property were nominated by the Mayor, City Council, HRB, CCDC, or other City agencies. Properties viewed as benefiting the general public interest and supporting the General Plan Historic Preservation Element and community plan goals could be nominated by the City with the cost of processing the nomination absorbed by the General Fund. Furthermore, staff proposes that the nomination fee not be applied to the establishment of historic districts and district contributors. A sliding scale fee is problematic because the staff cost, associated with review of high-value properties, is too similar to that of lower-value properties to establish different fee levels, and basing a fee on property value replicates a tax on the property and has been successfully challenged as such for other City value-based fees.

Staff also can assist a property owner who is unsure about whether their property is a likely candidate for designation and who is hesitant to spend \$1,185 for the nomination's submittal. Upon request, staff spends time, approximately one-half hour, discussing any site with an owner without charge. This is typically an adequate amount of time for the owner and their consultant to get a sense of the property's physical characteristics and changes and can alert the owner if there are obvious concerns about the property's ability to meet the U.S. Secretary of the Interior's Standards for designation.

- **Mills Act Program Agreement Fee of \$590 (see Attachment 11B):** Under Council Policy 700-46, the City Council authorizes staff to collect a fee for costs of processing the Mills Act Program Agreements. Staff recommends discontinuing the current fee which is based on assessed property values of record. Alternatively, staff proposes a fee based on the calculated cost of the actual tasks required to process a Mills Act Program Agreement. Included in this fee are costs for document preparation, discussions and Mills Act Program Agreements with property owners, legal Mills Act Program Agreement signing and review, and recording of the Mills Act Program Agreement (see Attachment 2 for proposed revisions to Council Policy 700-46 supporting the fee revision).

It should be noted that staff's intent is to amend the Mills Act Program Agreement document shell and clarify current standard provisions. In addition, staff intends to include in future Mills Act Program Agreements any specific property improvements or conditions that the HRB or staff identify during the designation process that would assure that the property would be improved or maintained in a condition that warrants the Mills Act Program Agreement's property tax reductions. Other jurisdictions granting Mills Act Program Agreements impose conditions, and staff intends to adopt this practice. Typical requirements could include assuring visibility of the site from the public right-of-way, reversing incompatible non-historic improvements, and maintaining key historical features of the property. Also, included would be the requirement to pay a future monitoring fee as proposed below.

- **Mills Act Monitoring Fee of \$492 initially and every five years thereafter (see Attachment 11C):** The purpose of the Mills Act legislation and Council Policy 700-46 is to encourage property owner reinvestment in historical properties through the use of property tax savings. A monitoring program is necessary to ensure Mills Act Program Agreement compliance and proper maintenance of designated properties in accordance with standards. Staff proposes this program component to assure that there is public benefit attained in exchange for the foregoing of a portion of a historical site's normally-assessed property tax. This fee would be assessed at the time of the initial Mills Act Program Agreement and every five years thereafter. Payment of this fee would be a condition of the Mills Act Program Agreement, meaning that non-payment of a future monitoring fee assessment would constitute violation of the Mills Act Program Agreement and subject it to revocation. Staff would begin the monitoring program with the earliest contracts and review approximately 200 contracts each year. The monitoring fee for existing Mills Act Program Agreements would be a requirement of the City's renewal of the Mills Act Program Agreement in the year that monitoring is first undertaken. This means that current property owners of the approximately 200 Mills Act Program Agreements first entered into with the City would be required to pay the \$492 fee or the City would issue a non-renewal notice. This would occur each year, addressing the existing Mills Act Program Agreements in order. It is estimated that each Mills Act contract will be reviewed every five years. This interval, to review a property's physical compliance with the requirements of the Mills Act Program Agreement, is expected to be a reasonable time frame to assure appropriate treatment by property owners of these historical resources. Every five years, a new fee and review will be required.
- Staff has also developed an additional fee of \$949 that would be charged only in the case of a **violation of the Mills Act Program Agreement (see Attachment 11D)**. In that case, staff would need to pursue compliance with the Mills Act Program Agreement, or process a revocation action.

Application of Fees for Submittals Pending Staff Review

Staff has had authorization to proceed with developing a fee since December 2003, (an LU&H Committee meeting directive). In addition, the City Council directed development of a fee during the budget hearings in June 2005. In neither hearing, however, was the issue of how to financially treat pending requests for voluntary nominations addressed. In order to treat all nominations equitably, staff proposes that all (approximately 105) pending requests be subject to the new fee. It is fair that requests continue to be evaluated and processed in order of submittal, with the longest-pending requests processed prior to newly-submitted ones. However, given that cost recovery is now a requirement to support this program, all requests that have not been reviewed and worked on by staff should be subject to the fee. All nominations currently awaiting staff review were submitted after January 1, 2007, well after the July 1, 2005 date the City Council directed a fee be developed and returned for adoption. The City Attorney's memo, dated March 10, 2005, supports the City's ability to apply the designation fee to these waiting nominations.

Unlike development projects typically seen by City decision makers, designation requests submitted under LDC Section 123.0202(a) are voluntary. Because these requests are not submitted in order to receive permission to make structural modifications to one's property, an applicant or owner may withdraw an application to avoid payment of the fee. There is no penalty

for withdrawing an application, and there is no mandate for the HRB to go forward with the designation process if an applicant chooses not to proceed. Property owners may make modifications to potential historical properties without the need to process a historical designation if those modifications are consistent with the U.S. Secretary of the Interior's Standards.

The City Council may establish the fee and apply it to pending nominations. Those nominations, yet to be analyzed by staff as of the effective date of the fee, would need to submit the nomination fee, as well as the Mills Act Program agreement processing fee and monitoring fee, in order to complete the Mills Act recordation (the final City step in the property tax reduction process). If processing of a nomination has been completed, and the site has been designated by the HRB, then only a revised Mills Act Program agreement fee and a monitoring fee would be collected.

Timing of Fee Payment

An additional issue of the timing of fee payment, with a suggestion that it could be paid at the time of the Mills Act Program agreement, was discussed at the June 2006 LU&H Committee hearing and previously raised during staff's outreach and discussion with community representatives, members of the public, and historical property consultants.

The perceived benefits of a delayed imposition of the fee would be: those who cannot afford the City's fee (total about \$2,300; initial cost about \$1,200) will be kept from having their property designated and delaying the fee will give them confidence that they will get the future tax relief; and, individuals may be interested in designation only for preservation of the home, not for the Mills Act tax relief, and they should not pay if they are only designating for public benefit.

The City Attorney has advised, in a June 17, 2005, memo that "... there is no compelling governmental purpose to warrant charging Mills Act Program Agreement applicants for the cost of the historical designation process while providing the service at no cost to property owners that elect not to apply for a Mills Act Program Agreement." Staff believes there is a risk in being able to collect a fee if the HRB denies a designation; owners will not want to pay for a process where they are not able to proceed to reduce their property tax. In other fee or deposit processes in the City, an applicant must pay whether a project is approved or denied. The same requirement should apply here since the same amount of staff work is required to move a nomination to an HRB hearing. It should be noted that with the current average annual savings in property taxes of \$7,886 and 76 percent of current Mills Act properties receiving more than \$2,500 in annual tax savings, the vast majority of Mills Act recipients will be able to recoup the proposed designation and Mills Act fees within one year, and 85 percent will recoup \$2,000 within the first two years. Savings will continue to accumulate each year.

In the same June 17, 2005 memo, the City Attorney agrees with staff that "cost recovery is best accomplished by charging the designation applicant at the time of application for designation or at established stages of the application process, but in either case, before the service is rendered." The Urban Form Division does not have the capacity in its budget to carry, or perhaps even forego, fees for work already performed. However, it may be possible for a historic preservation organization or other nonprofit group to establish a grant or loan program to help homeowners defer the cost of nomination until after designation.

CONCLUSION

As presented herein, staff recommends adopting several reform measures to the Mills Act Program that would allow the fiscal impacts to be managed, improve the accountability of the Program and provide cost recovery fees for the processing of designation requests submitted in accordance with LDC Section 123.0202(a), a Mills Act Program Agreement, monitoring program, and enforcement. Additionally, staff recommends that the reforms and fees be applied to pending applications and that the fee be required prior to work on each aspect of the program. Additionally, a Mills Act Agreement monitoring program would be established to ensure compliance with the requirements of individual contracts and the state enabling legislation for the benefit of the public.

ALTERNATIVES

As an alternative to the full cost recovery fee described above, which may result in a barrier to designation and may make the program unavailable to some economic groups, the City Council could adopt an alternative fee structure. A nomination fee of only \$100 would cover direct City costs of noticing, copying, postage, etc. associated with processing a nomination request. This alternative would include the full cost recovery fees for Mills Act Program agreements (\$590), monitoring of Mills Act agreement compliance (\$492 every five years), and Mills Act agreement enforcement, if needed (\$949). Because there would be only nominal fees for nominations, that aspect of the work program would not be cost recovery and would continue to be paid through the General Fund. The Mills Act monitoring program would be established under this alternative, resulting in an overall public benefit by ensuring appropriate maintenance and protection of these properties. There would be no perceived barrier to designation, with only a nominal cost to homeowners, the community or a historical group. The program would be available to all income groups.

Another alternative that the City Council could adopt is a fee waiver for economic hardship when a property owner can satisfactorily demonstrate that their annual income is less than the Area Median Income. This fee waiver could be applicable to all proposed fees. In these cases the cost of the nomination for historic designation and Mills Act program work would not be recovered and would be paid through the General Fund. The Area Median Income is set by the U.S. Department of Housing and Urban Development and is used by the City for various programs. This alternative would allow the historic designation process and Mills Act Program to be available to lower income property owners.

FISCAL CONSIDERATION:

It is staff's intention to closely monitor the revenue and costs of this program to ensure that staff time is fully recovered through the fee structure and that the program provides a high quality service to owners of designated historical resources for the benefit of the public. Adjustments to the fee schedule and the nomination and Mills Act Program agreement process in the future to better reflect accumulated experience are a necessary component of the program to ensure accountability and credibility.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In December 2003, Planning Department staff asked the LU&H Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the LU&H Committee did not approve a moratorium, it did "authorize staff to develop a

fee proposal” and “to investigate internal re-staffing and volunteer opportunities, and limiting the number of applications (for designation) accepted per month . . .” During review of the Planning Department’s Fiscal Year 2006 budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources submitted by any member of the public.

On June 21, 2006, the LU&H Committee reviewed the issue of fees for nominations of historical resources and Mills Act Program Agreements (see Attachment 5). After taking testimony and discussing the issues, the LU&H Committee forwarded the fee proposal to the full City Council without a recommendation but with direction for staff to develop options related to the timing of a fee and a way to accommodate those property owners who cannot afford to pay the fee.


COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

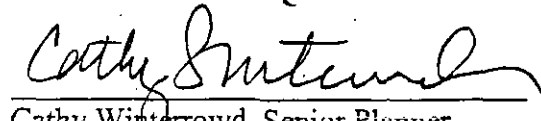
In the six months following the initial LU&H Committee direction on the question of fees in 2003, Historical Resources staff met several times with the Policy Subcommittee of the HRB, and several times with historical resources consultants, community historical societies, and representatives of the City’s recognized community planning groups. The Policy Subcommittee of the HRB consistently supported a fee to cover staff processing costs of voluntary nominations. However, both historical properties consultants and community representatives expressed concern that any fee, other than a nominal one, would deter property owners who wanted their properties to be designated as a historical resource from coming forward. Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties. The same positions came forward from consultants and community representatives at a meeting held in May 2006.

Staff presented information comparing the City’s overall Mills Act program with other jurisdictions’ programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City’s program was presented to the Policy Subcommittee in January 2008. There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor’s office following the meeting. Staff continued to research other jurisdictions’ programs and refine the proposed changes, considering public input and the City’s desire to increase the effectiveness of the program and assure compliance with performance requirements. A slightly revised proposal was presented to the Community Planners Committee in March 2008. Again, concern about the proposed changes was expressed by the public. In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed opposition to some or all of the changes being proposed. However, there was general agreement with changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees.

In July 2008, the HRB held a public hearing on the proposed Mills Act reforms. As with previous workshops, every owner of a designated historic property or of a nominated property, historic consultants, preservation organizations, and others who had expressed interest were notified by mail of the hearing. There remained strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts.

Respectfully submitted,


William Anderson, FAICP, Deputy Chief
City Planning & Development


Cathy Winterrowd, Senior Planner
City Planning & Community Investment

ANDERSON/WINTERROWD/sa

- Attachments:
1. Revisions to Council Policy 700-46 "Mills Act Program Agreements for Preservation of Historic Property"
 2. Draft Resolution for Revisions to Council Policy 700-46 and for the adoption of a Fee Schedule
 3. Mills Act Property Tax Abatement Program, Technical Assistance Series, California Office of Historic Preservation
 4. San Diego Council Policy 700-46
 5. Report to LU&H dated June 14, 2006 "Fees for Nominations of Historical Resources and Mills Act agreements"
 6. Mills Act Program Working Drafts
 7. Report to the Historical Resources Board dated July 18, 2008 "Item 12 - Proposed Changes to the Mills Act Program"
 8. Comments prepared by Shannon Lauchner for the July 24, 2008 City of San Diego Historic Resources Board Meeting on proposed changes to their Mills act Program
 9. Issues Raised on Proposed Mills Act Policy Changes with City Responses and Proposed Reforms
 10. Summary of Existing Mills Act Program and Proposed Changes to the Mills Act Program
 - 11A. Individual Historical Resource Nomination Fee Schedule (Land Development Code Section 123.0202(a))
 - 11B. Mills Act Program Agreement Fee Schedule
 - 11C. Mills Act Program Monitoring Fee Schedule
 - 11D. Mills Act Program Enforcement Fee Schedule
 12. SOHO Letter, dated July 21, 2005

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF
HISTORIC PROPERTY

POLICY NO.: 700-46

EFFECTIVE DATE: July 18, 1995 - REVISED (date)

BACKGROUND:

California state law authorizes cities to enter into contracts ("Mills Act Agreements") with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. "Qualified Properties" are defined in Government Code Section 50280.1 as: "privately owned property which is not exempt from property taxation and which meets either of the following: (a) listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 126 of the Code of Federal Regulations. (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks."

The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum ~~contract~~ Agreement term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the U.S. Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly noticed public hearing if it is determined that the owner breached any mandatory conditions of the ~~Contract~~ Agreement.

In 1995, the City Council determined that there was significant public benefit in granting Mills Act contracts to qualified properties and a City program was established.

PURPOSE:

This policy is adopted to enable a granting of ~~provide~~ a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

This policy is intended to set the general parameters within which the City Council will allow property tax benefits to be gained by individual property owners who, in exchange, restore and maintain their historic properties, thus generating a public benefit.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the reduction in property taxes affects the City's General Fund and in order to understand and manage this fiscal impact new Mills Act Agreements shall be subject to the Implementation delineated below.

It is also recognized that the historic preservation goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

1. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property, upon application by the owner, subject to the following restrictions

Deleted: the revitalization goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

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The City will recognize and accept into the Mills Act Agreement program those properties included on the

Deleted: California Register of Historic Places and the National Register of Historic Places. ¶

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A) Property Conditions: The ~~contract~~ Agreement shall contain the minimum mandatory conditions required by state law, including, but not limited to, provisions related to maintenance or rehabilitation of the property, explanation of conditions for non-renewal or revocation, and requirements for access by government officials for owner's compliance with the Agreement.

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B) Application Deadline: The City will recognize and accept into the Mills Act Program those properties included on the local San Diego Register of Historical Resources. The deadline for requesting a Mills Act Agreement, through formal submittal of an application shall be March 31st of each year. The property for which the agreement is requested must have been designated a historical resource by the City of San Diego Historical Resources Board at a noticed public hearing by December 31st of the year prior to the year an agreement is requested.

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C) Investment of Tax Savings: The Mills Act agreement application shall include a 10-year tailored work plan and shall demonstrate a substantial investment of the anticipated tax savings into the historic property. Work done prior to historic designation that was necessary to restore or rehabilitate the property to meet minimum requirements for designation, can be included in the work plan to demonstrate a substantial investment in the historic property.

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D) Property Tax Reduction Threshold: The City Manager or designee shall evaluate the anticipated tax reduction of each application, based on the County Tax Assessor's formula. The City Manager is authorized to enter into all agreements that collectively fall within a threshold of \$100,000 projected reduction in property tax revenue to the City's General Fund. The applications shall be evaluated and processed in the order received until the total projected reduction in property tax revenue to the City has reached \$100,000.

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E) Exceeding the Threshold: If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, the City Manager or designee shall present those applications to the City Council as part of that year budget process. The City Council may authorize the processing of Mills Act Agreements exceeding the \$100,000 threshold by making a finding that the fiscal health of the City is such that additional reduction in tax revenue can be supported by the budget.

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If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, and the City Council does not make a finding to authorize the processing of those Agreements, the property owner may choose to apply for an Agreement in a subsequent year.

F) Fees: The owner shall pay, in accordance with state law, ~~a graduated processing fee of \$100 per \$100,000 of assessed value prorated to actual value, however in no event shall the processing fee exceed the actual cost of processing and recording the Agreement;~~ a fee established by the City Council to cover the

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City's reasonable cost of administering the program, including: Mills Act Agreement preparation, processing, recording, monitoring, and enforcement. This fee is in addition to a City Council-adopted fee for processing historical nominations submitted in accordance with Land Development Code Section 123.0202(a).

G) Monitoring and Enforcement: A drive-by Inspections will be performed on a periodic basis by City staff to verify that the structure designated site is being maintained in weather-tight a condition in accordance with that meets the U.S. Secretary of the Interior's Standards, the City of San Diego Land Development Code, and the specific conditions of the Mills Act Agreement for the property.

H) Public Benefit: The Owner must allow or create visibility of the exterior of the structure from the public right-of-way.

~~Deleted:), including any approved Development and Design Guidelines for properties located in designated historic districts~~

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2. Areas Within Redevelopment Project Areas and Study Areas

Only after approval by the Redevelopment Agency, the Centre City Development Corporation, or the Southeast Economic Development Corporation, the City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a Redevelopment Project or Study area, upon application by the owner, subject to the above restrictions, and including: the provisions of Item 1 above, and the following:

Redevelopment Study Areas

Within a Redevelopment Study Area, Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in Item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.
2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:

- (1) The property requires rehabilitation; and

(2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency; and

(3) The owner demonstrates ~~that~~, through a project pro forma which is independently evaluated by the Agency, ~~that~~ a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be ~~implemented~~ entered into within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council, with respect to the number of Mills Act Agreements executed and the effectiveness of the program. The form of the report may be the required Certified Local Government Annual Report to the State Office of Historic Preservation which is also forwarded to the City Council.

MILLS ACT AGREEMENT PROCESSING

The City Manager or designee is authorized to process a Mills Act Agreement consistent with this Council Policy and subject to the following:

- (a) Owners of private property that are subject to property taxation may request a Mills Act Agreement from the City in pursuit of a property tax reduction in accordance with Government Code Sections 50280 - 50290. The prerequisites for a property owner seeking a Mills Act Agreement are:
- (1) the site is a designated historical resource [either individually designated or a contributor to a historical district] on the City's Register of Historical Resources.
 - (2) an application has been submitted to the City consistent with this Council Policy, as amended
 - (3) if the site is in a Redevelopment Area, the property owner has obtained approval from an official of the Redevelopment Agency; and
 - (4) all fees established by the City Council have been paid for processing the historical nomination, processing the Mills Act Agreement, and the initial Mills Act monitoring fee.
- (b) Upon completion of items in (a), the City staff shall provide a draft Agreement to the property owner, consistent with this Council Policy, as amended. The property owner may then submit the signed and notarized Mills Act Agreement for City processing.

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(c) The Agreement shall contain:

- (1) conditions imposed by the Historical Resources Board or City staff that are specific to the submitted property;
- (2) the property owner's commitment to a substantial investment of the tax savings into the maintenance and improvement of the property as part of a 10-year work plan and in accordance with the intent of the state law;
- (3) the property owner's agreement to comply with the U.S. Secretary of the Interior's Standards for the Treatment Historic Properties; and,
- (4) the property owner's acknowledgement that, in accordance with state law, that the Mills Act Agreement may be revoked for non-compliance with the Agreement provisions, including payment of established fees.
- (5) A provision to allow or create visibility of the exterior of the structure from the public right-of-way;

(d) City staff is authorized to establish cut-off dates for processing of Mills Act Agreements for that calendar year, including but not limited to, the date City staff must receive properly signed and notarized Mills Act Agreements to allow forwarding to the County of San Diego by the close of the calendar year.

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STATE LAW

If any provision of Government Code Sections 50280 – 50290 are amended in the future and it conflicts with any provision of this policy, staff is directed to follow state law and to bring forward an amendment to this Policy or to applicable provisions of the Land Development Code.

CROSS REFERENCE:

San Diego Municipal Code Section 26.0201, et seq. Land Development Code, Chapter 12, Article 3, Division 2: Designation of Historical Resources Procedures; Land Development Code, Chapter 14, Article 3, Division 2: Historical Resources Regulations.

Government Code Sections 50280, et seq. – 50290.

HISTORY:

Adopted by Resolution R-285410 02/27/1995
Amended by Resolution R-286051 07/18/1995
Amended by Resolution R-

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO APPROVING THE AMENDMENTS TO COUNCIL
POLICY 700-46 PERTAINING TO MILLS ACT AGREEMENTS
FOR PRESERVATION OF HISTORIC PROPERTY.

WHEREAS, the Mills Act was enacted in 1972 by the State of California to enable local jurisdictions "to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief;" and

WHEREAS, the Council of the City of San Diego adopted Council Policy 700-46 in 1995 "to provide a monetary incentive to the owners of historically designated in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego;" and

WHEREAS, when the Mills Act Program was set up in 1995, a monitoring system was not established and a program agreement was entered into for a period of ten years, with automatic renewal each year unless one of the parties proposed to end it; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Council Policy No. 700-46 titled "Mills Act Agreements for Preservation of Historic Property," pursuant to Land Development Code Section _____, is hereby approved with the following amendments listed below:

- Add a fiscal threshold of \$100,000 new tax revenue reduction to general fund on an annual basis;

- Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported;
- Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year;
- Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation; and
- Establish an inspection schedule for monitoring of Mills Act Program properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements

BE IT FURTHER RESOLVED, that the City Clerk is instructed to add the aforesaid to the Council Policy Manual.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:als
11/18/08
Or.Dept:Plannin
R-2009-681

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FEE SCHEDULE FOR INDIVIDUAL HISTORICAL RESOURCE NOMINATION, MILLS ACT PROGRAM AGREEMENT, MILLS ACT PROGRAM MONITORING, AND MILLS ACT PROGRAM ENFORCEMENT.

BE IT RESOLVED, by the Council of the City of San Diego, that this Council hereby approves Report No. _____, a copy of which is on file in the office of the City Clerk as Document No. RR-_____, and authorizes the adoption of the fees therein proposed.

BE IT FURTHER RESOLVED, that the Council hereby authorizes the _____ of said fees in the _____ Fee Schedules.

BE IT FURTHER RESOLVED, that the Council hereby authorizes the City Manager to adjust the Fee Schedule from time to time to recover increases in the administrative costs of the program.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:als
11/18/08
Or.Dept:Planning
R-2009-682

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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California Office of Historic Preservation
Department of Parks & Recreation

Technical Assistance Series



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Mills Act Property Tax Abatement Program

Purpose of the Mills Act Program

Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.

Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief.

Benefits to Local Governments

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

Benefits to Owners

Owners of historic buildings may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach to Value rather than by the standard Market Approach to Value. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year.

Qualified Historic Property

A qualified historic property is a property listed on any federal, state, county, or city register, including the *National Register of Historic Places*, *California Register of Historical Resources*, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program.

OHP's Role

OHP provides technical assistance and guidance to local governments and property owners. OHP maintains a current list of communities participating in the Mills Act program and copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the negotiations of the agreement and is not a signatory to the contract.

For Additional Information

Contact the planning department of the city or county within which the historic property is located.

California's four largest cities (Los Angeles, San Diego, San Francisco, and San Jose) as well as more than 75 other city and county governments have instituted Mills Act programs. A list of communities participating in the Mills Act Program is available online at http://www.ohp.parks.ca.gov/default.asp?page_id=21412.

For additional information on the Mills Act, please contact Maryln Lortie in the Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, (916) 653-8911, mlort@ohp.parks.ca.gov.

California State Codes Relating to Mills Act Program

California Government Code, Article 12, Sections 50280 - 50290

50280. Restriction of property use.

Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

50280.1. Qualified historic property.

"Qualified historical property" for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations.
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

50281. Required contract provision.

Any contract entered into under this article shall contain the following provisions:

- (a) The term of the contract shall be for a minimum period of 10 years.
- (b) Where applicable, the contract shall provide the following:
 - (1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.
 - (2) For the periodic examinations of the interior and exterior of the premises by the assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the owner's compliance with the contract.
 - (3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.
- (c) The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

50281.1. Fees.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

50282. Renewal.

(a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

(b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

50284. Cancellation.

The legislative body may cancel a contract if it determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The legislative body may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.

50285. Consultation with state commission.

No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

50286. Cancellation.

(a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12 1/2 percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

50287. Action to enforce contract.

As an alternative to cancellation of the contract for breach of any condition, the county, city, or any landowner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

50288. Eminent domain.

In the event that property subject to contract under this article is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

50289. Annexation by city.

In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

50290. Consultation with state commission.

Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4

439. Historical Property Restrictions; enforceably restricted property.
For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, property is "enforceably restricted" if it is subject to an historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

439.1. Historical Property; definitions.
For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

439.2. Historical Property; valuation.
When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated. For purposes of this section, income shall be determined in accordance with rules and

regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted. Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest $\frac{1}{4}$ percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest $\frac{1}{4}$ percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

439.3. Historical Property; notice of nonrenewal.

Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

(1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.

(2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.

(3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.

(5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).

(6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

439.4. Historical Property; recordation.

No property shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 439 is signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY**CURRENT**

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF HISTORIC
PROPERTY
POLICY NO.: 700-46
EFFECTIVE DATE: July 18, 1995

BACKGROUND:

California state law authorizes cities to enter into contracts ("Mills Act Agreements") with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum contract term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly notice public hearing if it is determined that the owner breached any mandatory conditions of the Contract.

PURPOSE:

This policy is adopted to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the revitalization goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

CP-700-46

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

1. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of any historically designated property, upon application by the owner and subject to the following restrictions:

- A) The contract shall contain the minimum mandatory conditions required by state law.
- B) The owner shall pay a graduated processing fee of \$100 per \$100,000 of assessed value prorated to actual value, however in no event shall the processing fee exceed the actual cost of processing and recording the Agreement.
- C) A drive by inspection will be performed on a periodic basis by City staff to verify that the structure is being maintained in weather tight condition.
- D) The Owner must allow visibility of the exterior of the structure from the public right-of-way.

2. Areas Within Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a redevelopment project or study area, upon application by the owner, subject to the above restrictions, and including:

Redevelopment Study Areas

Within a Redevelopment Study Area Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

- 1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.
- 2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:
 - (1) The property requires rehabilitation
 - (2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency

COUNCIL POLICY

CURRENT

(3) The owner demonstrates through a project proforma, which is independently evaluated by the Agency, that a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be implemented within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council with respect to the number of Mills Act Agreements executed and the effectiveness of the program.

CROSS REFERENCE:

San Diego Municipal Code Section 26.0201, et seq.
Government Code Sections 50280, et seq.

HISTORY:

Adopted by Resolution R-285410 02/27/1995
Amended by Resolution R-286051 07/18/1995



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 14, 2006 REPORT NO. 06-074

ATTENTION: Land Use and Housing Committee
Agenda of June 21, 2006

SUBJECT: Fees for Nominations of Historical Resources and Mills Act Agreements

REFERENCE: Planning Department Budget hearing of June 13, 2005

REQUESTED ACTION:

The City of San Diego's historical resources incentive-based Mills Act program has been so successful that the workload requires a full time staff position. As the Planning Department's General Fund revenue has decreased along with staffing levels, there has been a need to reassess whether staff efforts that result in property owners receiving property tax relief in exchange for maintaining their designated historical resource should be paid for by the General Fund. This report discusses a proposal to establish a series of fees to cover the City's expenses associated with processing individually submitted historical nominations. Staff is seeking support of the Land Use and Housing (LU&H) Committee prior to proceeding to City Council with the fee.

STAFF RECOMMENDATION:

Support the City Council direction given to the Planning Department at the June 2005 budget hearing and establish cost-recovery fees for: (1) public nominations of individual properties submitted for historical designation pursuant to Land Development Code (LDC) Section 123.0202(a) (with certain limited exceptions); (2) Mills Act Agreement processing (revised fee); and, (3) Mills Act Agreement monitoring in accordance with the historical resource nomination and Mills Act Agreement fee schedule. Amend LDC by amending Section 123.0202(a) and adding Section 123.0207 (see Attachment 1), and amend Council Policy 700-46 to reflect a revised fee (see Attachment 2). Apply the new fee to pending nominations and Mills Act Agreement requests. Defer adopting fees for processing public nominations of historical districts until the Historical Resources Board (HRB) completes its review and revision of the Historical Districts policy.

SUMMARY:

BACKGROUND

Designation of a property as a historical resource is a required prerequisite for an owner seeking a Mills Act Agreement to reduce their property tax assessment. The Planning Department's

budget does not include a position for this designation or Mills Act program work. In addition, the majority of the cost associated with the designation of individually submitted historical resources is paid for by General Fund revenue. The City of San Diego generally charges a fee to a property owner for services specific to their property. The historical designation nomination process under discussion is contained in the LDC Section 123.0202(a) where any member of the public may nominate any property for consideration as a historical resource. While the adopted LDC regulations allow for an individual's property to be nominated without their knowledge or approval, most nominations are made by a property owner for their own property. For this reason, this report refers to the nomination by any member of the public under LDC Section 123.0202(a) with the commonly used term "voluntary nominations."

A nomination submitted to the City is a request for an action to be taken by the HRB to designate a property as a historical resource. After designation, a property owner may request a Mills Act Agreement with the City. The Mills Act Agreement, after being recorded with the county, usually provides substantial property tax reduction to the property owner. Tax benefits to property owners vary greatly and depend on property location, size, and comparable rents in the area based on a formula established by state law. Staff calculates that, within the City, the average property tax savings for Mills Act recipients is 50 percent, varying between 25 percent and 75 percent. This tax benefit, authorized by the state of California in Government Code Sections 50280-50290, has been available since 1995 within the City through Council Policy 700-46 "Mills Act Agreements for Preservation of Historic Property." The Mills Act Agreement is entered into for a period of 10 years, with automatic renewal each year unless one of the parties proposes to end it. The City of San Diego may propose to end the Mills Act Agreement if the property is not maintained in accordance with the U.S. Secretary of the Interior Standards, or if other Mills Act Agreement provisions are not met. This property tax reduction is offered citywide, excluding some redevelopment areas, to owners of qualified properties as a financial incentive to maintain their designated historical resources. Other financial incentives may be available within redevelopment areas.

See *Proposed New Fees/Voluntary Nomination Fee* addressing the ability for nominations to be made by someone other than the property owner. It should be noted that nominations for historical designation that are referred to the HRB through the ministerial or discretionary review process from the Development Services department are fully charged for costs associated with the HRB staff review and processing of the referred, or "non-voluntary," nomination.

DISCUSSION

Currently there is no charge to individual nominating parties for historical resource designation. Under Council Policy 700-46, the Mills Act Agreement fee was set very low in 1995 to encourage property owner participation in the program. Council Policy 700-46 established a fee of \$100 per \$100,000 of assessed property valuation for processing a Mills Act Agreement, though the City Manager's staff capped the fee at \$400. No fee is charged for the processing of the historical nomination because the City Council recognized the need to originally entice property owners to utilize the program.

Based on the very large workload, staff is now proposing to recoup the actual costs of processing voluntary nominations and Mills Act Agreements. The current \$400 fee limit for the Mills Act Agreement is lower than the estimated cost of \$526, partly because the tasks performed to complete the Agreement are different than those anticipated in 1995. Government Code Section

50281.1 allows local jurisdictions to "... require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program." Staff's proposal is to establish a fee that recovers costs for professional and administrative staff time involved in processing and entering into the Mills Act Agreement.

The cost to process voluntary nominations is currently absorbed by the General Fund. Reductions in the availability of General Fund revenue to the Planning Department have caused a review of services that are of direct benefit to property owners, identifying a need to recoup the cost of those services.

When the Mills Act program was set up in 1995, there was no Mills Act Agreement or designated-property monitoring system established. Agreements that were entered into early in the program have now existed for ten years. As previously mentioned, Mills Act Agreements are entered into for an initial period of ten years, with automatic renewal each year. There is a responsibility, as Mills Act Agreements are automatically renewed, for the City to assure that a property remains in compliance with the original Mills Act Agreement requirements since property owners continue to receive property tax relief intended to assist with maintaining compliance. Staff believes there is a critical need to secure the necessary resources required to implement a monitoring program to assure compliance with agreement provisions and preservation of designated properties. Specifically, a monitoring program would require site visits, agreements record maintenance, and staff review of compliance.

Within the City of San Diego, the Mills Act has been an exceedingly successful incentive program for historic preservation. *There are more Mills Act Agreements entered into in the City of San Diego than in any other jurisdiction in the state.* See Attachments 5A and 5B for a comparative summary of the City's program and other state jurisdictions' programs. The City has recorded with the County Assessor 612 Mills Act Agreements from 1995 through 2005. Interest in the program remains high and continues to grow.

Proposed New Fees

State law authorizing the Mills Act program in cities allows collection of "a fee not to exceed the reasonable cost of administering this program." Staff's proposed fees are based on the reasonable cost of providing a service to a customer. Staff has diligently analyzed average/typical time and costs associated with the processing of voluntary nominations and Mills Act Agreements to identify an appropriate fee amount (see Attachments 3A, 3B, 3C and 3D). The proposed fee of \$2,360 consists of the following: \$1,529 per designation process; \$526 per Mills Act Agreement process; and \$305 to be assessed for monitoring with the initial agreement and every five years thereafter. The nomination fee of \$1,529 is due upon submittal of the nomination, and the Mills Act Agreement and Monitoring Program fees are due upon submittal of a signed and notarized agreement submitted by the property owner following the designation hearing. (Please note that while the costs identified in Attachment 3 include some time of a Deputy City Attorney, that the City Attorney's office has issued an April 19, 2006 memorandum indicating that their expenses for working on these activities are cost-recoverable. Thus, fees may be adjusted slightly to reflect attorney's costs on certain fee components.)

- Voluntary Nomination Fee of \$1,529 (see Attachment 3A): Currently the entire cost of processing a voluntary historical nomination request is absorbed by the General Fund. Since this process is a service to individual property owners, staff recommends

establishing a fee that recoups the average/typical cost of processing a voluntary nomination. The fee would cover direct costs of City staff to accept, review and analyze reports, conduct a site visit, and take to an HRB hearing each request for designation. The fee would also cover the costs of required document preparation that must be performed for each site upon designation by the HRB.

It should be noted that the applicable LDC section allows an application by any member of the public, not just by the property owner. Therefore, this fee would be charged to the actual person or persons submitting the nomination (e.g., neighbors submitting each others' residences as well as individuals or historical societies submitting someone's property without the owner's support - both rare exceptions to the voluntary nature of this program).

In public meetings where the proposed fee was discussed, there was concern expressed about the negative impact upon the ability for individuals or organizations to make nominations that would benefit the general public interest. Staff proposes that there be a fee exception created for certain categories of designations that can be viewed as benefiting the general public interest and supporting General Plan Historic Preservation Element and community plan goals. Staff anticipates this category could include nominations of resources with communitywide or citywide significance, but would not typically include individual residences. If this concept is supported by the LU&H Committee, staff will prepare further modifications to LDC Section 123.0202(a) for City Council adoption.

Staff also can assist a property owner who is unsure about whether their property is a likely candidate for designation and who is hesitant to spend \$1,529 for the nomination's submittal. Upon request, staff spends time, approximately one-half hour, discussing any site with an owner without charge. This is typically an adequate amount of time for the owner and their consultant to get a sense of the property's physical characteristics and changes and can alert the owner if there are obvious concerns about the property's ability to meet the U.S. Secretary of the Interior's Standards for designation.

- **Mills Act Agreement Processing Fee of \$526 (Attachment 3B):** Under Council Policy 700-46, the City Council authorizes staff to collect a fee for costs of processing the Mills Act Agreements. Staff recommends discontinuing the current fee which is based on assessed property values of record. Alternately, staff proposes a fee based on the calculated cost of the actual tasks required to process a Mills Act Agreement. Included in this fee are costs for document preparation, discussions and agreements with property owners, legal agreement signing and review, and recording of the agreement (see Attachment 2 for proposed revisions to Council Policy 700-46 supporting the fee revision).

It should be noted that staff's intent is to amend the Mills Act Agreement document shell itself and clarify current standard provisions. In addition, staff intends to include in future agreements any specific property improvements or conditions that the HRB or staff identify during the designation process that would assure that the property would be improved or maintained in a condition that warrants the agreement's property tax reductions. Other jurisdictions granting Mills Act Agreements impose conditions, and staff intends to adopt this practice. Typical requirements could include assuring visibility

of the site from the public right-of-way, reversing incompatible non-historic improvements, and maintaining key historical features of the property. Also included would be the requirement to pay a future monitoring fee as proposed below.

- **Mills Act Agreement Monitoring Fee of \$305 initially and every 5 years thereafter (Attachment 3C):** The purpose of the Mills Act legislation and Council Policy 700-46 is to encourage property owner reinvestment in historical properties through the use of property tax savings. A monitoring program is necessary to ensure agreement compliance and proper maintenance of designated properties in accordance with standards. Staff proposes this program component to assure that there is public benefit attained in exchange for the foregoing of a portion of a historical site's normally-assessed property tax. This fee would be assessed at the time of the initial Mills Act Agreement and every five years thereafter. Payment of this fee would be a condition of the Mills Act Agreement, meaning that non-payment of a future monitoring fee assessment would constitute violation of the Mills Act Agreement and subject it to revocation. Staff has not yet developed the program to identify how to assess this proposed fee to current Mills Act Agreement holders.
- Staff has also developed an additional fee of \$751 that would be charged only in the case of a **violation of the Mills Act Agreement (see Attachment 3D)**. In that case, staff would need to pursue compliance with the agreement, or process a revocation action.

Application of Fees for Submittals Pending Staff Review

Staff has had authorization to proceed with developing a fee since December 2003 (a LU&H Committee meeting directive). In addition, the City Council directed development of a fee during the budget hearings in June 2005. In neither hearing, however, was the issue of how to financially treat pending requests for voluntary nominations addressed. In order to treat all nominations equitably, staff proposes that all (approximately 60) pending requests be subject to the new fee. It is fair that requests continue to be evaluated and processed in order of submittal, with the longest-pending requests processed prior to newly-submitted ones. However, given that cost recovery is now a requirement to support this program, all requests that have not been reviewed and worked on by staff should be subject to the fee. All nominations currently awaiting staff review were submitted after July 1, 2005, i.e., after the date the City Council directed a fee be developed and returned for adoption. A City Attorney's memo, dated March 10, 2005, supports the City's ability to apply the designation fee to these waiting nominations.

Unlike development projects typically seen by City decisionmakers, designation requests submitted under LDC Section 123.0202(a) are voluntary. Because these requests are not submitted in order to receive permission to make structural modifications to one's property, an applicant or owner may withdraw an application to avoid payment of the fee. There is no penalty for withdrawing an application, and there is no mandate for the HRB to go forward with the designation process if an applicant chooses not to proceed. Property owners may make modifications to potential historical properties without the need to process a historical designation if those modifications are consistent with the U.S. Secretary of the Interior's Standards.

The City Council may establish the fee and apply it to pending nominations. Those nominations yet to be analyzed by staff as of the effective date of the fee would need to submit the

nomination fee as well as the Mills Act Agreement processing fee and monitoring fee in order to complete the Mills Act recordation (the final City step in the property tax reduction process). If processing of a nomination has been completed, and the site has been designated by the HRB, then only a revised Mills Act Agreement fee and a monitoring fee would be collected.

Additional Fee Issues

Additional issues with the fee proposal have arisen during staff's outreach and discussion with community representatives, members of the public, and historical property consultants. A meeting was held in May 2006 and many of the same issues arose as from a May 2004 meeting. Major issues are expressed through a letter from the Save Our Heritage Organisation (SOHO), (see Attachment 4). Staff took these recommendations seriously; however, after reviewing the Planning Department's fiscal situation and conferring with the City Attorney's office, staff cannot support any of these alternative fee proposals.

- **Sliding scale fee:** It has been suggested to staff that rather than establishing a single fee to be collected from every individually submitted property voluntarily applying for historical designation, that a sliding scale could be used to charge this fee based on assessed value or most recent purchase price, whichever is greater. It has been suggested that the amount charged could be \$200 per \$100,000 of assessed value or purchase price, up to a maximum charge equal to staff's actual cost to process the application. Staff has estimated that the typical cost of processing an application for historical designation is \$1,529. Therefore, under this approach, sites with an assessed value or recent sales price of approximately \$750,000 or greater would pay the calculated cost of the actual work performed by staff or more. Those with assessed value or recent sales price below \$750,000 would pay at a less-than-cost-recovery fee rate.

Staff does not support a sliding scale for several reasons: (1) while the cost of a consultant-prepared historical report may vary, based on property value because of potentially higher probability of famous inhabitants or notable architects, the staff cost associated with review of high-value properties is too similar to that of lower-value properties to establish different fee levels; and (2) basing a fee on property value replicates a tax on the property and has been successfully challenged as such for other City value-based fees.

- **Payment of all fees at the time of the Mills Act Agreement rather than when a nomination is submitted:** It has been suggested (by SOHO and others) that a fee not be charged at the time of nomination submittal but instead at the time a Mills Act Agreement is entered into. It was suggested that a submitter of a nomination could sign a statement committing to paying the nomination fee at the time of submittal of the Mills Act Agreement, i.e., after receiving historical designation status. The perceived benefits of a delayed imposition of the fee would be: those who cannot afford the City's fee (components total about \$2,400; up front is about \$1,500) will be kept from having their property designated and delaying the fee will give them confidence that they will get the future tax relief; and, individuals may be interested in designation only for preservation of the home, not for the Mills Act tax relief and they should not pay if they are only designating for public benefit.

Staff's response is that the City Attorney has advised, in a June 17, 2005, memo that "...there is no compelling governmental purpose to warrant charging Mills Act Agreement applicants for the cost of the historical designation process while providing the service at no cost to property owners that elect not to apply for a Mills Act Agreement." Staff believes there is a risk in being able to collect a fee if the HRB denies a designation; owners will not want to pay for a process where they are not able to proceed to reduce their property tax. In other fee or deposit processes in the City, an applicant must pay whether a project is approved or denied: the same requirement should apply here since the same amount of staff work is required to move a nomination to an HRB hearing. It should be noted that staff has calculated that 55 percent of the Mills Act recipients will be able to recoup \$2,000 in designation and Mills Act fees within one year, and 77 percent will recoup \$2,000 within the first two years. Savings will continue to accumulate each year.

In the same June 17 memo, the City Attorney agrees with staff that "cost recovery is best accomplished by charging the designation applicant at the time of application for designation or at established stages of the application process, but in either case, before the service is rendered." The Planning Department does not have the capacity in its budget to carry, or perhaps even forego, fees for work already performed.

Refer to the *Proposed New Fees/Voluntary Nomination Fee* section to see that staff offers a free consultation to a property owner who wants to discuss whether their property is a likely candidate for designation, and to discuss the benefits of designation.

Required Resources

One full time professional staff position is necessary to perform the tasks associated with the program discussed in this report. It is estimated that the designation processing portion of this program will require approximately 0.5 Full Time Equivalent (FTE) position per year, and the new Mills Act Agreement monitoring and maintenance component would be approximately another 0.5 FTE position. As with other positions in the historical resources program, the Planning Department will seek an individual who meets the standards for staffing a Certified Local Government program to fill this position.

It is staff's intention to closely monitor the revenue and costs of this program to ensure that staff time is fully recovered through the fee structure and that the program provides a high quality service to owners of designated historical resources for the benefit of the public. Adjustments to the fee schedule and the nomination and agreement process, in the future to better reflect accumulated experience, are a necessary component of the program to ensure accountability and credibility.

CONCLUSION

The City of San Diego greatly values the preservation of its historical resources and neighborhood character which occurs as a result of the designation of historical properties. Mills Act Agreements and voluntary nomination opportunities for property owners continue to provide a mutual benefit for both the City and historic property owners. The City Council has acknowledged the Planning Department's lack of resources to continue to support such efforts and has directed staff to develop a fee proposal. As presented herein, staff recommends adopting

a conservatively-calculated average fee for the processing of designation requests submitted in accordance with LDC Section 123.0202(a), a Mills Act Agreement, and a monitoring program. Additionally, staff recommends that the fee be applied to pending applications as previously discussed. Adoption of the complete fee proposal will provide the funding source necessary to effectively implement this function within the Historical Resources section of the Planning Department.

While voluntary nomination is a popular component of the historical resources work program, there are other equally important parts of the program that benefit the City as much as voluntary nominations do. Other private property-based staff costs typically are paid for by fees or deposits. The position added by the City Council to the historical resource program for Fiscal Year 2007 (FY07) will be utilized in work assignments critical to the City's program overall, including processing of historical districts. It is not staff's intent to utilize any significant portion of the new General Fund position for work attributable to voluntarily submitted historical nominations.

Staff is working with the HRB to review and modify the adopted Historical Districts policy. Once the revisions are made to this policy, staff will be able to better identify how the costs of a publicly-submitted historical district should be assessed.

In summary, the LU&H Committee is being asked to make recommendations to the City Council on the following actions:

1. Amendment of the LDC Chapter 12, Article 2, Division 3 to Amend LDC Section 123.0202(a) to authorize a fee for voluntary nominations, and to add Section 123.0207: Mills Act Agreements for Preservation of Historic Property.
2. Revisions to Council Policy 700-46 authorizing the granting of Mills Act tax reductions.
3. Adoption of a fee for historical nominations submitted under LDC Section 123.0202(a).
4. Adoption of a revised fee for the cost of processing Mills Act Agreements.
5. Adoption of a fee to cover staff's costs of monitoring compliance of property owners with their Mills Act Agreements.
6. Adoption of a fee that would be charged to properties that are found to be out of compliance with their Mills Act Agreement requirements.
7. Inclusion in the fee ordinance is a provision to apply the nomination fee to those nominations awaiting review and processing by City staff.

ALTERNATIVE

Do not adopt the nomination or monitoring fees discussed in this report. If fees are not adopted, this component of the historical resources program will become a General Fund function and nominations will be processed by staff as time is available. If this alternative is adopted by the City Council, staff projects capacity of processing about three voluntary nominations per month. This capacity does not allow staff to keep up with the average annual number of voluntary nominations submitted (around 50-60) and the current backlog would be expected to continue to grow. If this alternative is selected, staff recommends that it be clarified by the City Council that this pace of staff work is appropriate, given that the program would be General Fund supported. Mills Act Agreement fees would continue to be collected from interested property owners.

Staff does not recommend adopting the fees for only newly-submitted voluntary nominations but not charging those nominations waiting in the queue. As indicated, the City Attorney has indicated that a "retroactive" nomination fee is fair treatment for both waiting and future nominations.

FISCAL CONSIDERATION:

One full time professional staff position is necessary to perform the tasks associated with the program discussed in this report. It is estimated that the designation processing portion of this program will require approximately 0.5 FTE position per year, and the new Mills Act Agreement monitoring and maintenance component would be approximately another 0.5 FTE position. In order to include an additional position in the Planning Department budget to oversee the voluntary nomination/Mills Act program, the cost recovery of expenses must be assured since the Planning Department has no excess General Fund revenue to support this program. Fees have been based on expenses for an Associate Planner job classification although the Personnel Department has not yet classified a position level for this job.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In December 2003, Planning Department staff asked the LU&H Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the LU&H Committee did not approve a moratorium, it did "authorize staff to develop a fee proposal" and "to investigate internal restaffing and volunteer opportunities, and limiting the number of applications (for designation) accepted per month..." During review of the Planning Department's Fiscal Year 2006 (FY06) budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources submitted by any member of the public.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

In the six months following the December 2003 LU&H direction, HRB staff met several times with the Policy Subcommittee of the HRB, and several times with historical resources consultants, community historical societies, and representatives of the City's recognized community planning groups. The policy subcommittee of the HRB has consistently supported a fee to cover staff processing costs of voluntary nominations. However, both historical properties consultants (who themselves charge fees to property owners) and community representatives expressed concern that any fee, other than a nominal one, would deter property owners who wanted their properties to be designated as a historical resource from coming forward. The same positions came forward from consultants and community representatives at a meeting held in May 2006.

Respectfully submitted,

William Anderson, FAICP, Director
City Planning and Community Investment

James T. Waring, Deputy Chief
Land Use and Economic Development

WARING/ANDERSON/MCCULLOUGH/ah

- Attachments:
1. Land Development Code, Chapter 12, Article 3, Division 2 with amendment to Section 123.0202(a) and new Section 123.0207
 2. Revisions to Council Policy 700-46 "Mills Act Agreements for Preservation of Historic Property"
 - 3A. Fee Components for Nomination Fee for Applications Submitted by any Member of the Public Pursuant to LDC Section 123.0202(a)
 - 3B. Mills Act Agreement Processing Tasks
 - 3C. Mills Act Agreement Monitoring Program Fee
 - 3D. Mills Act Monitoring Program Fee/Enforcement
 4. SOHO Letter, dated July 21, 2005
 - 5A. Mills Act Savings in the City of San Diego
 - 5B. Historic Preservation Program Information for California Municipalities Comparison

Mills Act Program Working Draft

	Numerical Limit	Eligibility Requirements	Application Deadline	Mills Act Requirements	Inspection Requirements	Fees
Existing Program	No limit	All designated properties eligible (inside RA discretionary)	October 1	Visibility of the resource and site specific conditions	None	\$100 for every \$100k of assessed value, up to a max of \$400
Proposed Program	Annual Limit	Designation by December 31 st of previous year and meets at least one of the following criteria where granting an agreement would: <ol style="list-style-type: none"> 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment; 2. enhance opportunities for maintaining or creating affordable housing; 3. facilitate preservation and maintenance of a property in cases of economic hardship; or 4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure in an area where the City is concentrating revitalization efforts (outside RA) 	March 31	10-year tailored agreement for every property to achieve necessary rehabilitation or restoration plan; visibility of resource	Prior to new agreement and every 5 years (prior to renewal date)	\$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years (will be applied to existing agreements at time of renewal) \$949 enforcement fee only if needed

Mills Act Program Working Draft*

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* with provisions for "pipeline" nominations submitted prior to effective date of adopted changes to program

CPC meeting 3/25/2008



THE CITY OF SAN DIEGO

Historical Resources Board

DATE ISSUED: July 18, 2008

REPORT NO. HRB-08-052

ATTENTION: Historical Resources Board
Agenda of July 24, 2008

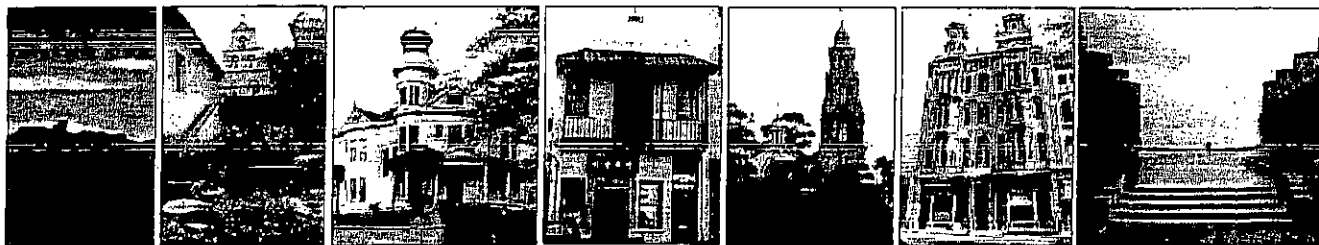
SUBJECT: **ITEM 12 – PROPOSED CHANGES TO THE MILLS ACT
PROGRAM**

DESCRIPTION: Consider proposed changes to the current Mills Act program and make recommendations on the proposed changes to the San Diego City Council.

STAFF RECOMMENDATION

HRB Staff recommends that the Board make the following recommendations to the San Diego City Council related to the Mills Act Program:

1. Set an annual fiscal limit for Mills Act agreements based on new revenue loss to the general fund and do not set an aggregate limit for the total number of Mills Act agreements.
2. Establish eligibility requirements for new Mills Act agreements and retain current discretion within Redevelopment Areas. Require historic designation by December 31 of the year preceding the application for a Mills Act agreement and require the property owner to meet at least one of the following criteria where granting an agreement would:
 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;
 2. enhance opportunities for maintaining or creating affordable housing;



3. facilitate preservation and maintenance of a property in cases of economic hardship; or,
4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure.
3. Change the application deadline to March 31 of each year.
4. Add a requirement for a 10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or implement a restoration plan and retain the requirement for visibility of the resource from the public right-of-way.
5. Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date.
6. Establish cost recovery fees for implementation of the Mills Act program, as follows:
\$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years; and \$949 enforcement fee only if needed.

BACKGROUND

The Mills Act was enacted in 1972 by the State of California to enable local jurisdictions "to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief" (see Attachment 1). The San Diego City Council adopted Council Policy 700-46 in 1995 "to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego" (Attachment 2). The first Mills Act agreement was recorded in 1996. During the past 12 years the number of agreements has increased substantially and the program is the most active one within the State. As of June 2008, there are approximately 901 effective Mills Act agreements for historic properties within the City.

Review of the City's Mills Act program began in 2004 with a focus on changing the fee structure from a percentage of the property's assessed value up to a maximum of \$400 to a cost recovery fee that would provide sufficient revenue to the City to pay the cost of the service being offered in preparation and monitoring of Mills Act agreements. This initial review of the program included an acknowledgement by the City that sufficient monitoring and inspection of Mills Act properties was not occurring. While staff observes the conditions of designated historic properties while conducting site visits for other nominated properties and project reviews, there is no formal monitoring or inspection procedure. The fee structure developed at this time included the costs for staff time to monitor existing Mills Act properties along with time to prepare new agreements. Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties.

As part of this process, staff researched how other California cities and counties implemented the Mills Act. A number of cities, large and small, throughout the State were contacted to obtain information about their programs. Categories of information included numerical limits, eligibility requirements, application deadline, contract requirements, inspection requirements, and fee. The data was compiled and compared to the City's program. Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs

and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City's program was presented to the HRB Policy Subcommittee in January 2008.

There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor's office following the meeting. Staff continued to research other jurisdictions' programs and refine the proposed changes, considering public input and the City's desire to increase the effectiveness of the program and assure compliance with performance requirements. A revised proposal was presented to the Community Planners Committee in March 2008. Again, concern about the proposed changes was expressed. In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed opposition to specific changes being proposed by staff. However, there was general agreement with some changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees. There remains strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts. Attachment 3 provides a summary of the issues raised by Board members and the public, the City's response to the issues raised, and background information related to the issues.

ANALYSIS

It is the City's position that changes to the current Mills Act program are warranted for a number of reasons. The program was established at a time when the City was not able to regulate the preservation of historical resources and with only minimal oversight provided for monitoring of Mills Act properties. The Land Development Code now includes historical resources regulations and it is understood that formal monitoring of agreements is necessary. There is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program on an annual basis.

Proposed changes are compared to the existing program in Attachment 4. A discussion of the implementation of each change and the effect of the proposed change on property owners is included, as well.

Although minimal in overall City budget, staff believes it is important to understand the fiscal impact of the program and manage it on an annual basis. The current loss is of property tax revenue to the City's General Fund is \$1,126,073 from Mills Act property valuations. Setting a fiscal limit would not eliminate the program and is not expected to reduce the current level of new yearly contracts. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly. The average number of new contacts annually is approximately 75.

The intent of including eligibility criteria as a requirement for obtaining a Mills Act agreement is to address other General Plan policies through the directed use of new Mills Act contracts and

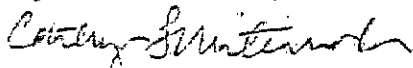
prioritize new contracts for properties that are in immediate need of rehabilitation or restoration efforts; to help to achieve citywide housing needs; in situations when ordinary maintenance of a historic property is economically prohibitive; and for owners that can demonstrate the tax savings would support substantial reinvestment in their historic property.

Based on research related to other California jurisdictions, the City's stated desire to have a program that is highly accountable and to understand and manage the fiscal impacts of the program, staff recommends the HRB make the following recommendations to the City Council:

1. Set an annual fiscal limit for Mills Act agreements based on new revenue loss to the general fund and do not set an aggregate limit for the total number of Mills Act agreements.
2. Establish eligibility requirements for new Mills Act agreements and retain current discretion within Redevelopment Areas. Require historic designation by December 31 of the year preceding the application for a Mills Act agreement and require the property owner to meet at least one of the following criteria where granting an agreement would:
 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;
 2. enhance opportunities for maintaining or creating affordable housing;
 3. facilitate preservation and maintenance of a property in cases of economic hardship; or,
 4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure.
3. Change the application deadline to March 31 of each year.
4. Add a requirement for a 10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or implement a restoration plan and retain the requirement for visibility of the resource from the public right-of-way.
5. Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date.
6. Establish cost recovery fees for implementation of the Mills Act program, as follows: \$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years; and \$949 enforcement fee only if needed.

CONCLUSION

In conclusion, staff recommends a number of changes to the existing Mills Act program to improve accountability and manage the fiscal impact.



Cathy Winterrowd
Senior Planner/Program Coordinator

- Attachment:
1. OHP Technical Bulletin
 2. San Diego City Council Policy
 3. Issues Matrix
 4. Summary of Existing Program and Proposed Changes Matrix

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California Office of Historic Preservation
Department of Parks & Recreation
Technical Assistance Series

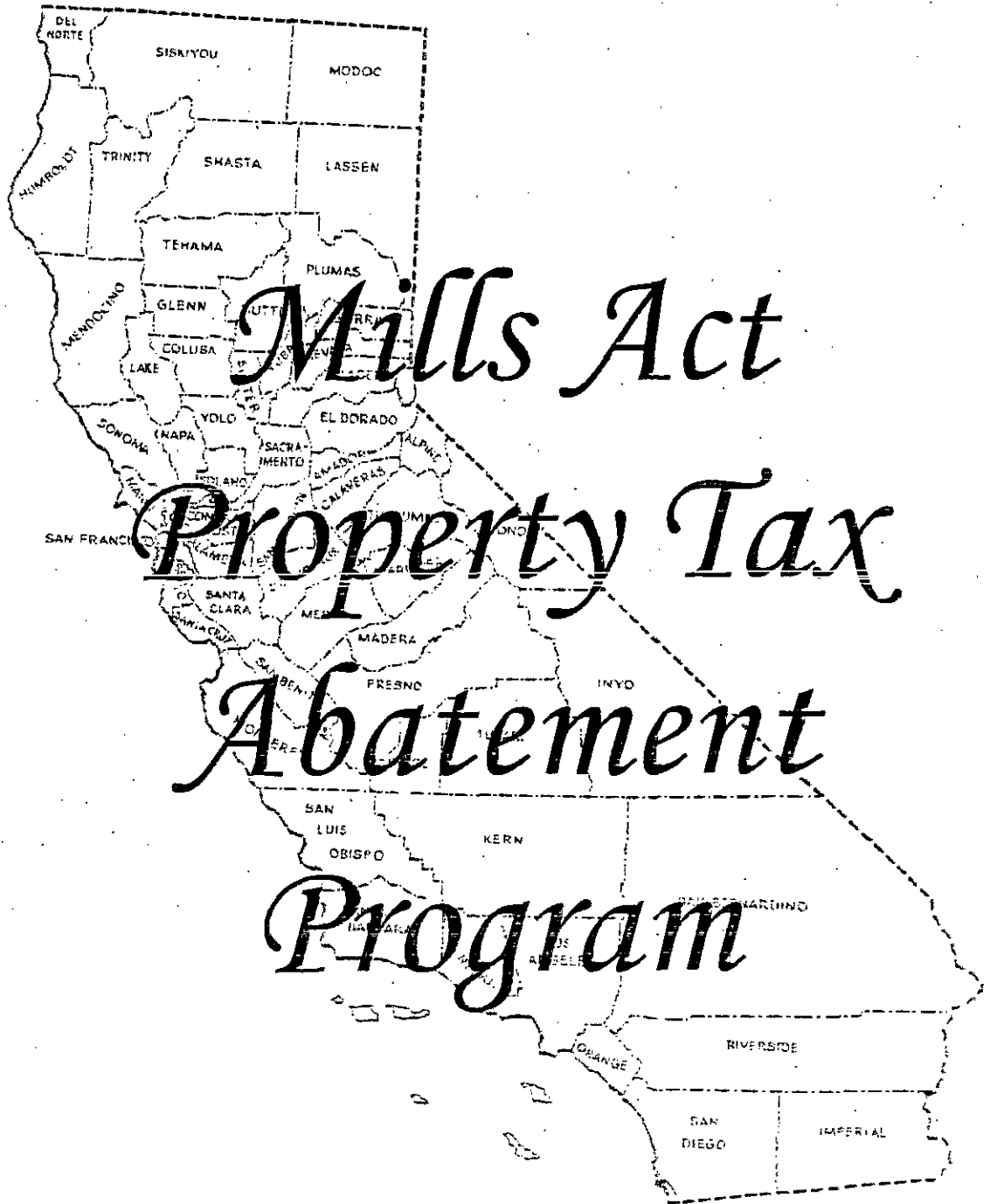


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Mills Act Property Tax Abatement Program

Purpose of the Mills Act Program

Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.

Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief.

Benefits to Local Governments

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

Benefits to Owners

Owners of historic buildings may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach to Value rather than by the standard Market Approach to Value. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year.

Qualified Historic Property

A qualified historic property is a property listed on any federal, state, county, or city register, including the *National Register of Historic Places*, *California Register of Historical Resources*, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program.

OHP's Role

OHP provides technical assistance and guidance to local governments and property owners. OHP maintains a current list of communities participating in the Mills Act program and copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the negotiations of the agreement and is not a signatory to the contract.

For Additional Information

Contact the planning department of the city or county within which the historic property is located.

California's four largest cities (Los Angeles, San Diego, San Francisco, and San Jose) as well as more than 75 other city and county governments have instituted Mills Act programs. A list of communities participating in the Mills Act Program is available online at http://www.ohp.parks.ca.gov/default.asp?page_id=21412.

For additional information on the Mills Act, please contact Marylin Lortie in the Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, (916) 653-8911, mlort@ohp.parks.ca.gov.

California State Codes Relating to Mills Act Program

California Government Code, Article 12, Sections 50280 - 50290

50280. Restriction of property use.

Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

50280.1. Qualified historic property.

"Qualified historical property" for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations.
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

50281. Required contract provision.

Any contract entered into under this article shall contain the following provisions:

- (a) The term of the contract shall be for a minimum period of 10 years.
- (b) Where applicable, the contract shall provide the following:
 - (1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.
 - (2) For the periodic examinations of the interior and exterior of the premises by the assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the owner's compliance with the contract.
 - (3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.
- (c) The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

50281.1. Fees.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

50282. Renewal.

(a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

(b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

50284. Cancellation.

The legislative body may cancel a contract if it determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The legislative body may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.

50285. Consultation with state commission.

No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

50286. Cancellation.

(a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12 1/2 percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

50287. Action to enforce contract.

As an alternative to cancellation of the contract for breach of any condition, the county, city, or any landowner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

50288. Eminent domain.

In the event that property subject to contract under this article is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

50289. Annexation by city.

In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

50290. Consultation with state commission.

Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4

439. Historical Property Restrictions; enforceably restricted property.
For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, property is "enforceably restricted" if it is subject to an historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

439.1. Historical Property; definitions.
For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

439.2. Historical Property; valuation.
When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated. For purposes of this section, income shall be determined in accordance with rules and

regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted. Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

439.3. Historical Property; notice of nonrenewal.

Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

(1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.

(2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.

(3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.

(5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).

(6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

439.4. Historical Property; recordation.

No property shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 439 is signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF HISTORIC
PROPERTY
POLICY NO.: 700-46
EFFECTIVE DATE: July 18, 1995

BACKGROUND:

California state law authorizes cities to enter into contracts ("Mills Act Agreements") with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum contract term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly notice public hearing if it is determined that the owner breached any mandatory conditions of the Contract.

PURPOSE:

This policy is adopted to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the revitalization goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

CP-700-46

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

1. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of any historically designated property, upon application by the owner and subject to the following restrictions:

- A) The contract shall contain the minimum mandatory conditions required by state law.
- B) The owner shall pay a graduated processing fee of \$100 per \$100,000 of assessed value prorated to actual value, however in no event shall the processing fee exceed the actual cost of processing and recording the Agreement.
- C) A drive by inspection will be performed on a periodic basis by City staff to verify that the structure is being maintained in weather tight condition.
- D) The Owner must allow visibility of the exterior of the structure from the public right-of-way.

2. Areas Within Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a redevelopment project or study area, upon application by the owner, subject to the above restrictions, and including:

Redevelopment Study Areas

Within a Redevelopment Study Area Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

- 1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.
- 2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:
 - (1) The property requires rehabilitation
 - (2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency

COUNCIL POLICY

CURRENT

(3) The owner demonstrates through a project proforma, which is independently evaluated by the Agency, that a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be implemented within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council with respect to the number of Mills Act Agreements executed and the effectiveness of the program.

CROSS REFERENCE:

San Diego Municipal Code Section 26.0201, et seq.
Government Code Sections 50280, et seq.

HISTORY:

Adopted by Resolution R-285410 02/27/1995
Amended by Resolution R-286051 07/18/1995

Issues Raised on Proposed Mills Act Policy Changes with City Response and Alternatives

Issues were raised by homeowners, preservation professionals, Historical Resources Board Members, and general public orally at meetings and workshops and in writing. Responses to these issues address the City's position and provide background on the issue. Alternatives that could be implemented to address the issue are suggested.

Issue No.	Issue	Response	Alternatives to Address Issue		
			#A	#B	#C
1	Why change the existing Mills Act Policy?	Current policy is 12 years old and overall historic preservation program has significantly changed, specifically now have regulations and review for preservation; promote Mills Act incentives for properties in need of rehabilitation or restoration and in low and moderate income areas; monitoring of properties to assure compliance with contract; tailored agreements to show tax savings re-invested in property; and need to understand and manage the fiscal impact on an annual basis.	Make comprehensive changes to focus program on rehabilitation needs and in areas of low and moderate income households, add monitoring requirements, tailor agreements to each property, and manage fiscal impacts of program	Make limited changes to add monitoring requirements, tailor agreements to each property	Make no changes
2	How will changes affect nominations already submitted?	Revised policy can include pipeline provisions for properties already in process related to an annual limit and new eligibility requirements. Pipeline provisions would not apply to the application deadline, Mills Act requirements (tailored agreements), inspection schedule, and fees.	Pipeline provisions apply to all designated properties and all nominations submitted before effective date of policy changes.	Pipeline provisions apply only to properties designated before effective date of policy changes.	No pipeline provisions.
3	This is the only incentive for single family home owners.	HRB Incentives Subcommittee has been established to address General Plan policies encouraging use of incentives.	Increase the number and type of non-fiscal incentives at same time as changes are made to Mills Act policy.	Follow changes to Mills Act policy with additional non-fiscal incentives.	No new incentives
4	Annual limit will reduce protections for historic sites.	Protections provided through historical resources regulations would not change.	See Alternative 8A	See Alternative 8B	See Alternative 8C
5	Additional eligibility criteria will effectively eliminate program because few if any buildings would qualify.	Intent of eligibility criteria is to address other General Plan policies through the directed use of new Mills Act contracts and prioritize new contracts for properties that are in immediate need of rehabilitation or restoration efforts; help to achieve citywide housing needs; when ordinary maintenance of a historic property is economically prohibitive; and that support reinvestment in historic property.	Require properties to meet at least one of the eligibility requirements in order to enter into a new Mills Act contract	Use the eligibility requirements to prioritize issuance of new contracts	No additional eligibility requirements for Mills Act contracts

Issue No.	Issue	Response	Alternatives to Address Issue		
			#A	#B	#C
6	Proposed fees are too high.	Proposed fees are best estimate of staff time required to complete tasks (cost recovery fee).	Full cost recovery with regular review and adjustment based on actual costs	Arbitrary fee that would be less than cost recovery	Minimal fee and no increase in program (no monitoring)
7	Losing important historic buildings causes negative impact on neighborhoods.	Mills Act is an incentive to achieve preservation of individual buildings; additional incentives and programs are needed to address retention of neighborhood character, such as conservation areas with established design guidelines	Conservation areas and other tools to address neighborhood character needed as part of community plan updates	Conservation areas and other tools to address neighborhood character may be implemented in advance of community plan updates if warranted	Do not address neighborhood character
8	Fiscal impact of Mills Act tax reduction is minimal compared to overall benefits of historic preservation.	Although minimal in overall City budget, important to understand the impact and manage it on an annual basis. Current loss is \$1,126,073 yearly to general fund from 885 Mills Act contracts.	Set an annual fiscal limit for new revenue loss to the general fund. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly.	Set an annual limit in the number of new Mills Act contracts. For example, a limit of 75 new yearly contracts would result in an average new loss to the general fund of \$95,400 yearly	Set no limit and do not manage the fiscal impact to the City's general fund
9	Cost of maintaining historic house is greater than for a non-historic house.	Mills Act tax reduction helps to offset the costs – average savings to property owners is \$7,485 yearly	Limit additional incentives to non-fiscal impacts.	Evaluate ability to provide additional fiscal incentives to offset maintenance costs.	No new incentives
10	Need to make sure that low and moderate income neighborhoods can benefit from the Mills Act program.	Guidelines have been prepared to assist homeowners with historic designation process, reducing the costs for consultants. Establishing historic districts can bring many more properties into the preservation program and allow owners to benefit from the Mills Act.	City take lead in establishing historic districts in areas with low and moderate income households and prioritize new Mills Act contracts for these owners	Work with non-profits and create public/private sponsorship programs to support historic preservation for low and moderate income property owners	Do not prioritize Mills Act contracts for property owners in low and moderate income neighborhoods

Summary of Existing Mills Act Program and Proposed Changes to the Mills Act Program

Existing Program	Proposed Change to Mills Act Program as Recommended by Staff	Implementation of Proposed Change:	Affect of the Proposed Change		
			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	<u>Existing</u> Mills Act Agreement property owners
Annual Limit on New Agreements					
No limits	Set an annual fiscal limit for new revenue loss to the general fund. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly. There is no aggregate limit proposed.	The number of new agreements would be limited annually on a fiscal basis. If more applications were submitted than could be accommodated under the limit, the property owner would have the option of applying in a subsequent year.	Annual limits would be applicable to all properties submitted for historic designation after the effective date of the change	Annual limits would not apply to Historic Designation Nominations submitted prior to the effective date of the change.	Annual limits would not apply to existing agreements.
Eligibility Requirements					
All designated properties are eligible (inside Redevelopment Area is discretionary)	Designation by December 31 of previous year and meets at least one of the following criteria where granting an agreement would: 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment; 2. enhance opportunities for maintaining or creating affordable housing; 3. facilitate preservation and maintenance of a property in cases of economic hardship; or 4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure Retain discretion within Redevelopment Areas	Historic designation would have to occur no later than December 31 of the year preceding the application for a Mills Act agreement and the property owner would be required to demonstrate how a Mills Act agreement would meet at least one of the eligibility requirements. 1. "Substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment." This requirement can be met by an owner who purchases an already designated property that has not been properly maintained or has been abandoned by previous owners. Rehabilitation and/or restoration consistent with the Secretary of the Interior's Standards would be required. This eligibility requirement would have the highest priority due to the importance of maintaining and preserving designated historical resources. It is not anticipated that many new agreements would meet this requirement. 2. "Enhance opportunities for maintaining or creating affordable housing." This eligibility requirement can be met by an owner who is participating in an affordable housing program or who will maintain	Eligibility requirements would be applicable to Historic Designation Nominations submitted after the effective date of the change.	Eligibility requirements would not apply to Historic Designation Nominations submitted prior to the effective date of the change.	Eligibility requirements would not apply to existing agreements.

Existing Program	Proposed Change to Mills Act Program as Recommended by Staff	Implementation of Proposed Change	Affect of the Proposed Change		
			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	Existing Mills Act Agreement property owners
		<p>affordable units throughout the life of the agreement. It is not anticipated that many new agreements would meet this requirement.</p> <p>3. "Facilitate preservation and maintenance of a property in cases of economic hardship." This eligibility requirement could be met by an owner of any income level that can demonstrate substantial cost for necessary maintenance or rehabilitation of a designated historical resource when compared to the property value or other financial consideration that would indicate hardship. It is not anticipated that many new agreements would meet this requirement.</p> <p>4. "Support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure." This eligibility requirement could be met by an owner showing that a substantial portion of their anticipated property tax savings will be reinvested in the historic property over time. An estimate of the property tax savings from the County Tax Assessor's office and a cost estimate of needed maintenance, repairs and/or rehabilitation work would be needed. It is anticipated that most historic properties would be eligible for a Mills Act agreement under this eligibility requirement.</p>			
Application Deadline					
October 1 of each year	March 31 of each year	To allow sufficient time for the fiscal impacts of new agreements to be included in the annual City budget process, owners of historically designated properties would be required to submit an application for a Mills Act agreement no later than March 31 to be considered that year.	This deadline would apply to all Mills Act applications.	This deadline would apply to all Mills Act applications.	This deadline would not be applicable to properties with Mills Act agreements.
Mills Act Agreement Requirements					
Visibility of the resource and site specific conditions	10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or restoration plan; visibility of resource	Owners of designated historic properties would be required to include a 10-year maintenance and rehabilitation/restoration plan at the time of application for a Mills Act agreement. All Mills Act properties are required to be visible from the public right-of-way. This requirement is not proposed for change.	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	Owners of historic properties may be required to include a maintenance or rehabilitation/restoration plan at the time of renewal.

Existing Program	Proposed Change to Mills Act Program as Recommended by Staff	Implementation of Proposed Change	Affect of the Proposed Change		
			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	Existing Mills Act Agreement property owners
Inspection Schedule					
Informal monitoring conducted by staff during routine site visits and in response to community inquiries.	Prior to new agreement and every 5 years (prior to renewal date)	A formal schedule for inspections and monitoring of Mills Act properties would be established by staff and conducted to assure compliance with the provisions of the agreement. Staff would work with property owners to remedy any problems identified through the inspection process. A maintenance and/or rehabilitation/restoration plan may be prepared as part of a renewal of an agreement to assure the necessary remedy.	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	These requirements would apply to properties with existing Mills Act agreements.
Fees					
\$100 for every \$100k of assessed value, up to a max of \$400	\$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years \$949 enforcement fee only if needed	Following historic designation, a property owner would be required to pay a one-time Mills Act agreement fee with their application. A monitoring fee would be required at the time of recordation of the Mills Act agreement and every 5 years thereafter. An enforcement fee of would be required only in cases of non-compliance with the agreement.	All proposed fees would apply	All proposed fees would apply	Monitoring fee would be applied to existing agreements at time of renewal. Enforcement fee would be applied only as needed.

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

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July 23, 2008

**Comments prepared by Shannon Lauchner for the July 24, 2008 City of San Diego
Historic Resources Board Meeting on proposed changes to their Mills Act Program.**Intro:

Hello. My name is Shannon Lauchner and I am here on behalf of the California Office of Historic Preservation. I am the Mills Act Coordinator, and am pleased to be here today to participate in your hearing on your Mills Act Program. As you well know, despite being a state law, the Mill's Act is a locally administered program. We have no regulatory role or authority in the program. Our job is to advise both local governments and private property owners participating in, or interested in the Mills Act. During my time coordinating the program at OHP I have had the opportunity to speak with local governments across the state and have gained a unique statewide perspective on the Mills Act. The variety of programs out there is fairly dramatic, and should also note that we at the State Office have long applauded the robust nature of San Diego's Mills Act Program. We recognize that your local government has led the state in championing this important and affective fiscal preservation incentive.

Separation of Programs and Applications:

As I am sure that you are aware, Wayne Donaldson, State Historic Preservation Officer, and a long supporter of historic preservation in San Diego, recently sent a letter to Mayor Jerry Sanders commenting on the San Diego County Grand Jury Report, "History Hysteria." It was clear in the report that there was a significant level of misunderstanding, and that the Grand Jury had both confused and conjoined the designation process with the Mills Act program. He was extremely concerned that this confusion could jeopardize the integrity of the City's designation program as a result of efforts made to address perceived revenue loss through the Mills Act program. After thoroughly and critically reviewing the current proposal for changes to the City's Mills Act Program our office, along with Mr. Donaldson, strongly supports the decision to clearly separate the designation and Mills Act processes and applications. The proposed changes clearly delineate the two programs, thereby preserving the integrity of the designation process.

Public Concern & General Comments:

Because of the level of success achieved by the City's Mills Act program I understand that the public may be concerned about any proposal recommending changes to the program. However, I can tell you after working closely with participating local governments across the state that the proposed changes before you today are in fact in line with current Mills Act policies, practices, and industry standards statewide.

San Diego Senator, Jim Mills, sponsored legislation that led to California Government Code 50280- 50290, establishing the Mills Act and created the framework for local and voluntary programs that offer property tax reduction in exchange for a contractual commitment for the

restoration, rehabilitation, or maintenance of a qualified historic property. Local governments can, and do, adopt programs that meet the needs of their historic preservation goals and community wide goals within the framework established by the state law.

Opinion:

It is the opinion of SHPO Wayne Donaldson and the Office of Historic Preservation that the proposed changes to San Diego's program do just that for your community. By adopting an annual fiscal limit for new contracts, establishing eligibility criteria, instituting work schedules for restoration, rehabilitation and maintenance, and setting a timeline for routine inspections a framework will be established for a program that holds both the City and private property owners accountable for their actions with regard to Mills Act contracts. The emphasis of the proposed changes reflects a commitment to the premise that tax savings realized through a Mills Act contract should be reinvested in the historic resource, which clearly echoes the intent of the law and serves to further the goals of the active and vital preservation program in the City of San Diego.

We recommend, however, that should the proposed changes be enacted, that the City plan to reevaluate the new program framework and limits within the first five years in order to determine if the changes have affectively achieved the program goals and the Mills Act continues to be a strong positive tool for the preservation of San Diego's historical resources.

Thank you for your time.

Issues Raised on Proposed Mills Act Policy Changes with City Response and Proposed Reforms

The following issues have been raised by homeowners, preservation professionals, HRB Members, and the general public orally at meetings and workshops and in writing.

Issue No.	Issue	Discussion	Proposed Reform
1	Why change the existing Mills Act Policy?	Current policy is 12 years old and overall historic preservation program has significantly changed, specifically now have regulations and review for preservation; promote Mills Act incentives for properties in need of rehabilitation or restoration and in low and moderate income areas; monitoring of properties to assure compliance with contract; tailored agreements to show tax savings invested in property, and need to understand and manage the fiscal impact on an annual basis.	Make comprehensive changes to manage fiscal impacts of program; provide necessary accountability from property owners receiving tax reductions and from the City in the protection of designated historical properties; establish fee to recover the costs of the program
2	How will changes affect nominations already submitted?	Revised policy can include pipeline provisions for properties already in process related to an annual limit and new eligibility requirements. Pipeline provisions would not apply to the application deadline, Mills Act requirements (tailored agreements), inspection schedule, and fees.	The final proposed reforms do not include an annual fixed limit to the number of new agreements or new eligibility requirements. Therefore, no pipeline provisions are proposed.
3	This is the only incentive for single family home owners.	HRB Incentives Subcommittee has been established to address General Plan policies encouraging use of incentives.	It is anticipated that staff and the HRB will continue to work on a number of non-fiscal incentives including relief from some zoning requirements for historic properties, a transfer of development rights program, and architectural assistance for historic property owners.
4	Annual limit will reduce protections for historic sites.	Protections provided through historical resources regulations would not change.	An annual fixed numerical limit for new Mills Act agreements is not proposed. The number of new agreements would depend on the overall tax savings and managing those property tax reductions to the General Fund.
5	Additional eligibility criteria will effectively eliminate program because few if any buildings would qualify.	New eligibility requirements are no longer proposed. A property owner will have to demonstrate a substantial investment of tax savings in the historic property as part of the proposed tailored 10-year agreement.	There are no longer any additional eligibility requirements for Mills Act agreements proposed.
6	Proposed fees are too high.	Proposed fees are best estimate of staff time required to complete tasks (cost recovery fee).	Full cost recovery fees are proposed, with regular review and adjustment based on actual costs.

Issue No.	Issue	Discussion	Proposed Reform
7	Losing important historic buildings causes negative impact on neighborhoods.	Mills Act is an incentive to achieve preservation of individual buildings; additional incentives and programs are needed to address retention of neighborhood character, such as conservation areas with established design guidelines	Neighborhood character is not addressed through the Mills Act program or the proposed reforms.
8	Fiscal impact of Mills Act tax reduction is minimal compared to overall benefits of historic preservation.	Although minimal in overall City budget, important to understand the impact and manage it on an annual basis. Current loss is \$1,134,170 yearly to general fund from 901 Mills Act contracts.	Set an annual threshold for new revenue loss to the general fund of \$100,000. This new loss would result in an average of 50 to 75 new contracts yearly, based on past averages.
9	Cost of maintaining historic house is greater than for a non-historic house.	Mills Act tax reduction helps to offset the costs – average savings to property owners is \$7,886 to \$11,846 yearly, based on past averages.	No additional fiscal incentives are being proposed as part of the current Mills Act reforms.
10	Need to make sure that low and moderate income neighborhoods can benefit from the Mills Act program.	Guidelines have been prepared to assist homeowners with historic designation process, reducing the costs for consultants. Establishing historic districts can bring many more properties into the preservation program and allow owners to benefit from the Mills Act.	Alternatives to establishing full cost recovery fees for this program are not proposed. Although not part of the Mills Act program, the City may take the lead in establishing historic districts in areas with low and moderate income households, as staffing permits. It is suggested that non-profit groups support historic preservation for low and moderate income property owners through a grant or loan program.

Summary of Existing Mills Act Program and Proposed Changes to the Mills Act Program

Existing Program	Proposed Change to Mills Act Program as Recommended by the Mayor	Affect of the Proposed Change		
		Historic Designation Nominations Submitted after Effective date of Change	Historic Designation Nominations Submitted prior to Effective date of Change	Existing Mills Act Agreement property owners
Annual Limit on New Agreements				
No limits	There is no fixed annual limit and no aggregate limit proposed. Set an annual fiscal threshold for new revenue loss to the general fund of \$100,000.	The threshold would be applicable to all properties submitted for historic designation after the effective date of the change.	The threshold would be applicable to all properties submitted for historic designation prior to the effective date of the change. Since this is not a fixed annual limit for new agreements, no pipeline provisions are proposed.	Annual limits would not apply to existing agreements.
Eligibility Requirements				
All designated properties are eligible with specific requirements applied to properties located within Redevelopment Areas	No change is proposed to eligibility requirements.	No change is proposed.	No change is proposed.	No change is proposed.

Existing Program	Proposed Change to Mills Act Program as Recommended by the Mayor	Affect of the Proposed Change		
		Historic Designation Nominations Submitted after Effective date of Change	Historic Designation Nominations Submitted prior to Effective date of Change	Existing Mills Act Agreement property owners
Application Deadline				
October 1 of each year	March 31 of each year for properties designated prior to December 31 st of prior year	This deadline would apply to all Mills Act applications.	This deadline would apply to all Mills Act applications.	This deadline would not be applicable to properties with Mills Act agreements.
Mills Act Agreement Requirements				
Visibility of the resource and site specific conditions	10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or restoration plan and maintenance; agreement must show substantial investment of tax savings in the historic property; visibility of resource	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	Owners of historic properties may be required to include a maintenance or rehabilitation/restoration plan at the time of renewal.
Inspection Schedule				
Informal monitoring conducted by staff during routine site visits and in response to community inquiries.	Prior to new agreement and every 5 years (prior to renewal date)	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	These requirements would apply to properties with existing Mills Act agreements.

Existing Program	Proposed Change to Mills Act Program as Recommended by the Mayor	Affect of the Proposed Change		
		Historic Designation Nominations Submitted after Effective date of Change	Historic Designation Nominations Submitted prior to Effective date of Change	Existing Mills Act Agreement property owners
Fees				
\$100 for every \$100k of assessed value, up to a max of \$400	\$1,185 individual nomination fee for historic designation \$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years \$949 enforcement fee only if needed	All proposed fees would apply	All proposed fees would apply	Monitoring fee would be applied to existing agreements at time of renewal. Enforcement fee would be applied only as needed.

**INDIVIDUAL HISTORICAL RESOURCE NOMINATION
FEE SCHEDULE
(LAND DEVELOPMENT CODE SECTION 123.0202(a))**

Task Name	Total Hours of Staff Time	Total Cost in Dollars
Intake	0.8	52.00
File preparation	0.3	19.50
Initial review/Completeness Check	1.2	116.40
Field check	1.2	124.00
Agenda item	0.4	42.60
Docket review	0.7	80.30
Staff report	1.9	191.90
Hearing notice	0.4	29.20
Distribution	0.9	68.10
Graphics preparation	0.4	38.80
HRB Hearing	1.9	205.60
Action letter	0.3	19.50
Resolution preparation	1.1	88.40
Minutes	0.4	31.10
File close out	0.2	13.00
Update Register	0.3	24.60
Sub-Total	11.5	1145.00
Printing costs per item:		40.00
Total	11.5	\$1185.00

Note: tasks may require a combination of professional and administrative staff time.

5/4/2007

MILLS ACT PROGRAM AGREEMENT FEE SCHEDULE

Task Name	Total Hours of Staff Time*	Total Cost in Dollars
Receive and log application	0.2	13.00
Pull designation file	0.2	13.00
Staff field check	0.6	58.20
Obtain ownership/parcel information	0.2	13.00
Meeting with owner to discuss agreement	1.75	179.25
Prepare tailored agreement	0.8	71.20
Prepare cover letter, copy and mail agreement	0.3	19.50
Log agreement (sent and received)	0.2	13.00
Deputy Director review and sign agreement	0.2	35.40
Notarize agreement and carry to DCA for signature	0.3	19.50
Deputy City Attorney review and sign	0.3	39.60
Billing log, send and receive County Recorder	0.3	19.50
Copies to Tax Assessor, Owner and File	1.1	71.50
Sub-Total	6.45	\$565.65
County Recorder's recordation fee - average		\$25.00
Total:		\$590.65

*Note: tasks may require a combination of professional and administrative staff time

5/4/2007

MILLS ACT PROGRAM MONITORING FEE SCHEDULE

Task Name	Total Hours of Staff Time	Total Cost in Dollars
Review File/Agreement	1.2	124.00
Field Check	0.6	58.20
Conditions Assessment	0.7	67.90
Recommendation Review	1.5	155.00
Designation file update/letter to owner	0.6	58.20
Database Update	0.3	29.10
Total	3.8	\$492.40

*Note: tasks may require a combination of professional and administrative staff time

5/4/2007

**MILLS ACT PROGRAM
ENFORCEMENT FEE SCHEDULE
(AS NEEDED)**

Task Name	Total Hours of Staff Time*	Total Cost in Dollars
Issue Review	0.8	81.40
Restoration Plan	4.0	410.80
Meetings & Correspondence	2.0	209.20
Action Letter	1.0	100.80
Follow up field review	1.2	127.80
Database update	0.2	19.40
Total Hours:	9.2	\$949.40

*Note: tasks may require a combination of professional and administrative staff time

5/4/2007



Save Our Heritage Organisation

2476 San Diego Avenue • San Diego CA 92110 • (619) 297-9327 • www.sohosandiego.org

July 21, 2005

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HRB COST-RECOVERY FEE PROPOSAL

Existing Code:

California Government Code, Article 12, Sections 50280 – 50290
50281.1. Fees.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

SAN DIEGO COUNCIL POLICY CP-700-46

B) The owner shall pay a graduated processing fee of \$100 per \$100,000 of assessed value prorated to actual value, however in no event shall the processing fee exceed the actual cost of processing and recording the Agreement.

New Policy Wording [proposed]:

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

The cost of administering the program includes, but is not limited to, reviewing voluntary designation request, generating staff reports, implementing the Mills Act, and following up on the condition of Mills Act properties to ensure the property owner's compliance with Mills Act contract requirements.*

* It seems most efficient to leave actual numbers and dollar values out of the policy wording itself. Staff memos should suffice to detail the reasonable costs. This structure would allow for fee increases as economic conditions and labor costs change without having to implement a policy change, thus ensuring the financial health of the department.



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The memo discussing the reasonable cost to administer the program and when those costs would be recovered could be outlined as follows:

1. Currently the cost to review a voluntary designation request, generate staff report, provide administrative support, etc. falls into a range between \$ _____. The most simple and fair way to calculate the fee for any particular property is as follows: *The owner shall pay a graduated processing fee of \$200 per \$100,000 of assessed value or, if the property has been purchased within 24 months of the request for a Mills Act contract, actual purchase price as shown on escrow documents, whichever is greater, processing fee not to exceed \$3000.*

* Using a graduated scale to calculate the review fee is supportable since the owners of properties with higher assessed values will realize greater actual dollar value property tax savings. Structuring the partial cost recovery fee in this manner for this portion of the program's administration cost is seen as a one-time method for offsetting this greater actual dollar loss to the City in terms of its portion of property tax reallocation. Additionally, homes with greater assessed values generally require more staff time to review since they are more likely to be important under several criteria.

2. The cost to generate the Mills Act contract and prepare all necessary documents to submit to the County is currently \$ _____. Property owners will pay this cost as a one-time flat fee.
3. The projected cost to monitor Mills Act contract compliance is recurring and expected to cost \$ _____ per year. Property owners will pay this cost as a flat fee, perhaps every other year.
4. Obtaining a Mills Act property tax reduction is a process. Part of the process is obtaining historic designation; another part is submitting a signed Mills Act contract. The process is considered complete when a signed Mills Act contract is submitted to the Planning Department. The fee for the entire process will be collected upon completion.

Of Special Note:

It should be remembered that this is a unique program. There is no other opportunity like that presented by the Mills Act. Therefore, it can not be compared policy-wise to any other fee-supported service provided by the City of San Diego to an individual citizen.

There will be no property owners coming forward with disgruntled arguments against the fee calculation because they will be recouping all their fee costs within the first 1-2 years after the Mills Act tax savings is in place.



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Citizens in discussion, arbitration, and/or litigation involving fees in other departments will not be able to use this program as precedent to support their actions since this process is unlike any other in terms of the ongoing benefit received by participants.

Structuring the cost-recovery method in the manner proposed has the capability of ensuring ongoing fiscal health for the HRB department, as opposed to flat fees called out in hard and fast policy language which will always be losing ground due to inflation and increased labor costs.

The collection of a large, flat, upfront review fee is seen as a barrier to designation for some property owners since it is the same for all applicants regardless of the value of their property, complexity of the review process, or household income. Also, the fee would be collected whether or not the property was successfully designated. Some applicants would be unable to take that financial risk and may choose not to seek designation.

Having no upfront fee, but collecting monies *after* the property achieves landmark status is fair and much more palatable. Since the structure will have already been designated, participants would be assured they will recover fee costs through future property tax reductions.

Some may argue that this formula falls apart when a property is reviewed, but not designated, or designated, but not established into the Mills Act program. Those situations will occur, though not very often. Most structures voluntarily submitted for designation, about 95%, are successfully recognized and enlisted in the Mills Act.

One other financial benefit to the HRB is that, under the proposed system, property owners within historic districts entering into Mills Act contracts would pay the same fees as owners of individually landmarked buildings, whether or not the structures were recently designated. So, the new owner of a home designated 20 years ago as part of a district, but upon which there had never been an active Mills Act contract, would pay this proposed cost-recovery fee.

Based on my experience with historic property owners and as a recipient of Mills Act tax savings myself, I can absolutely assure you that this proposed method of collecting review, Mills Act, and monitoring fees will work, and work well. Property owners will gladly pay the fees rather than face the disbanding of the program or the prospect of another missed Mills Act cycle while languishing on the waiting list – a list made long due to the inability of the department to adequately provide staff due to budget issues.

Respectfully Submitted,

Beth Montes
President, Save Our Heritage Organisation



S501
12/02

THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: November 21, 2008

IBA Report Number: 08-119

City Council Meeting Date: November 24, 2008

Item #: 202

Mills Act Program Reforms and Cost Recovery Fees

OVERVIEW

On Monday, November 24, 2008 the City Council will be asked to approve amendments to the Land Development Code and Council Policy 700-46 "Mills Act Agreements for Preservation of Historic Property," to reform the City's Mills Act Program. The City Council is also asked to implement cost recovery fees for the administration of the program.

The Mills Act was enacted in 1972 by the State of California to enable local governments to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief. The State of California's Office of Historic Preservation identifies the benefits to the local government of having a Mills Act program as the "conserving of resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past." Mills Act contracts are between the property owner and the local government granting the tax abatement. Each local government establishes their own criteria and determines how many contracts they will allow in their jurisdiction.

In 1995 the City of San Diego established a Mills Act program. In their November 18, 2008 (Report # 08-176) report to the City Council, staff states that the current program is "Very informal" and "Only a limited number of agreements include additional preservation or rehabilitation requirements and there is no requirement that the tax savings realized through this program be invested in the historic property." Staff also states that "There is no formal inspection schedule or monitoring of agreements for



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compliance with the contract requirements.” Over the last two years there has been a desire by the Mayor and the City Council to review the current program to ensure its effectiveness and to propose a cost recovery fee proposal. In addition, the effectiveness of the City’s Mills Act program has recently come under scrutiny from the San Diego County Grand Jury.

The City of San Diego currently has 901 Mills Act contracts resulting in an annual reduction of \$1.1 million in property tax revenue. As pointed out by the San Diego County Grand Jury, the City San Diego has substantially more Mills Act contracts when compared to other California jurisdictions.

FISCAL/POLICY DISCUSSION

The reform of the City’s Mills Act program can be simplified into one overarching question - How does the City balance protecting our historical properties while limiting the fiscal impact to the General Fund? It is the opinion of the IBA that staff has proposed sensible modifications to the Mills Act program that addresses this question. The modifications proposed by staff include:

- Requiring a formal application process with a set deadline;
- Establish an inspection schedule for monitoring Mills Act properties;
- Establish a fiscal threshold for tax revenue reduction to the General Fund;
- And establish a cost-recovery fee.

The following sections provide comments, additional information, and recommendations that our office has on the staff’s recommendations.

Staffing for the City’s Historical Resources Section

For the proposed reforms to the City’s Mills Act program to be successful, adequate staffing in the Historical Resources Section is essential. The following chart details staffing levels for the City’s Historical Resources Section over the last four fiscal years:

Fiscal Year	Staff
2006	1.00 Senior Planner 1.75 Senior Planner "borrowed" from Community Planning. 1.00 Associate Planner Total Staff: 3.75
2007	2.00 Senior Planner 1.75 Senior Planner "borrowed" from Community Planning. 1.00 Senior Clerk Typist Total Staff: 4.75
2008	2.00 Senior Planner 1.75 Senior Planner "borrowed" from Community Planning. 1.00 Senior Clerk Typist Total Staff: 4.75
2009	3.75 Senior Planner 1.00 Senior Clerk Typist Total Staff: 4.75

Staff has indicated that if the proposed reforms are approved they will expect to complete an average of 200 inspections per year and process 3-6 applications per month or an estimated 50 per year. They have also stated that the existing staffing levels should allow them to meet their goals. However, some delays could occur due to the impacts of reductions to the City Planning and Community Investment Department that have been proposed to help solve the City's Fiscal Year 2009 budget deficit. These reductions include a cut of (\$200,000) to the Uptown Cluster Community Plan Update. Prior to the proposed reduction, the department was expecting to hire consultants to help with various components of the Uptown Cluster Community Plan Update. If the reduction is approved, the Historical Resources Section will assume some of the responsibilities for completing the Uptown Cluster Community Plan. ***It is important to note that if staff is reduced from the Historical Resources Section, the effectiveness of the reforms and the program will be severely impacted.***

Cost Recovery Fee Proposal

Currently the City of San Diego charges a maximum fee of \$400 to process a Mills Act Program Agreement and no fee for the processing of historical designation nominations. As pointed out by staff in their November 18, 2008 (Report # 08-176) report, the majority of the City's cost to process Mills Act applications and historical designation nominations is absorbed by the General Fund. To ensure cost recovery of the program, staff has proposed the implementation of the following fee schedule:

Fee Description	Fee Amount
Individual Historical Resource Nomination Fee (To be paid upon submittal of nomination)	\$1,185
Mills Act Program Agreement Fee (To be paid at the time of request for a Mills Act Program Agreement following the historic designation)	\$590
Mills Act Monitoring Fee (To be paid upon submittal of a signed and notarized Mills Act Program Agreement)	\$492

Staff has developed the proposed fee amounts based on the tasks associated to complete the designation, agreement, and monitoring. When developing the fees, staff factored in the fully loaded salary amounts for the positions responsible for each task and the time associated with each project. Staff provided the IBA with their back up information for our review and we concur with the methodology that they used to develop the fees. It should be noted that the proposed fees are based on current salary data. In the resolution before Council, staff has requested the authority to adjust the Fee Schedule from time-to-time to recover increases in the administrative costs of the program.

Other alternative fee proposals have been reviewed by staff and our office. In a July 21, 2005 letter from The Save Our Heritage Organisation, they proposed a graduated processing fee of \$200 per \$100,000 of assessed value of the home with a cap of \$3,000. The IBA has reviewed this method but felt that depending on the assessed valuation of the home, the fees collected would not cover the costs to administer the program and for some homeowners they would end up paying more than what is cost recoverable. It is also important to note that the City's Administrative Regulation on fees (Administrative Regulation 95.25 – "Processing new and revised fees and charges for current services,") states that the policy on fees is to **recover the cost** of providing certain services.

Finally, it should be pointed out that the proposed fee policy does not factor in an economic hardship waiver for those that cannot afford to pay the fees. Although the Mills Act Program is voluntary, it is the opinion of the IBA that homeowners who qualify and are willing to adhere to the program guidelines should be given the opportunity to participate regardless of their ability to pay the fee. Staff has indicated that because the program is voluntary, they do not have statistics on homeowners who would like to participate in the program but are precluded from doing so because of financial constraints. However, they estimate that the number is a small percent of the overall applications. Although not included in their formal proposal to the City Council, staff does discuss a possible option to incorporate an economic hardship waiver for property owners that can satisfactorily demonstrate that their annual income is less than the Area Median Income. If the homeowner qualifies, all fees would be waived. If the fees were waived, the General Fund would assume the costs for these homes. ***The IBA supports the inclusion of an economic hardship waiver in the updated City Council Policy. If***

an economic hardship waiver is approved by the City Council, the IBA recommends that staff reports on the number of economic hardship waivers granted annually.

Annual Threshold

As staff points out in their November 18, 2008 report, the City currently experiences an annual reduction of \$1.1 million in Property Tax Revenue related to Mills Act agreements. Based on the need to manage the fiscal impacts of the program to the City's General Fund, staff is proposing to implement an annual threshold amount of \$100,000 in additional Property Tax reductions from the approval of new Mills Act agreements. The IBA supports the implementation of a threshold. The implementation of a threshold will put into place a process where the City Council is annually informed of the impacts of new Mills Act agreements and can choose to increase the threshold based on the financial condition of the City. The IBA does offer the following suggestions and changes to the threshold implementation language included in the strike-out version of City Council Policy 700-46.

IMPLEMENTATION

Proposed Language

E) Exceeding the Threshold: If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, the City Manager or designee shall present those applications to the City Council as part of that year budget process. The City Council may authorize the processing of Mills Act Agreements exceeding the \$100,000 threshold by making a finding that the fiscal health of the City is such that additional reduction in tax revenue can be supported by the budget.

If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, and the City Council does not make a finding to authorize the processing of those Agreements, the property owner may choose to apply for an Agreement in a subsequent year.

It concerns the IBA that the "Exceeding the Threshold" language proposed by staff confuses calendar year with fiscal year. The City's fiscal year runs from July 1st to June 30th and transcends multiple calendar years. The calculation of the impact to the General Fund should be based on fiscal year and not calendar year to be consistent with the City's annual budget process. In addition, the IBA is concerned that once the \$100,000 threshold is reached, the City Council will be asked to approve the **applications** that are over the threshold and not just an increase to the threshold. The IBA believes that the intent should be for the City Council to approve increasing the threshold, not specific applications. The proposed process for applications that are submitted after the threshold could result in applicants being treated differently. The proposed language states that the property owner may choose to apply for an Agreement in a subsequent year but does not state if they have to pay additional fees. It seems unfair that an applicant would have to re-apply because they are over the City's threshold. The IBA believes if the Council does not approve an increase to the threshold, then applications that have already been

submitted should be rolled over to the next fiscal year. Based on these concerns the IBA offers the following suggestions to clarify the proposed language:

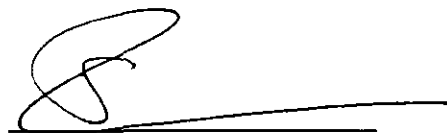
E) Exceeding the Threshold: If in any ~~calendar year~~ **Fiscal Year**, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, the City Manager or designee shall ~~present those applications to the City Council as part of that year budget process~~ **seek Council authorization to exceed the threshold**. The City Council may authorize the processing of Mills Act Agreements exceeding the \$100,000 threshold by making a finding that the fiscal health of the City is such that additional reduction in tax revenue can be supported by the budget.

If in any ~~calendar year~~ **Fiscal Year**, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$100,000, and the City Council does not make a finding to authorize the processing of those Agreements, the property owner may choose to apply for an Agreement in a subsequent year. **owner's application will be rolled over to the next Fiscal Year.**

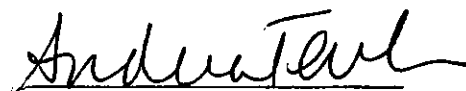
CONCLUSION

Overall the IBA supports the proposed reforms to the City's Mills Act program. The reforms proposed by staff balance protecting our historical properties while limiting the fiscal impact to the General Fund. The IBA does recommend the following:

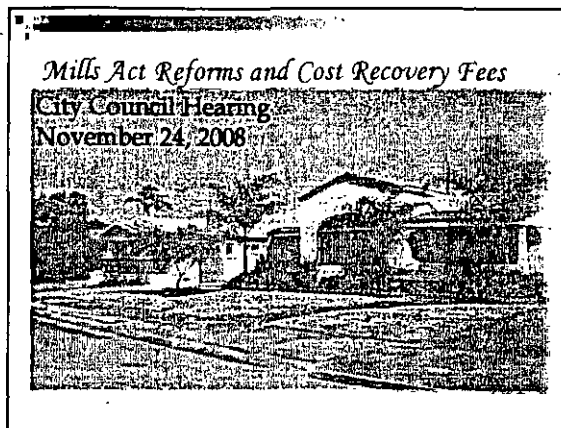
- *The inclusion of an economic hardship waiver in the updated City Council Policy. If an economic hardship waiver is approved by the City Council, the IBA recommends that staff reports on the number of economic hardship waivers granted annually.*
- *Recommend language changes to the modifications to Council Policy 700-46 as proposed by staff and discussed in the Annual Threshold Section of this report.*



Jeffrey Sturak
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst



Mills Act Reforms and Cost Recovery Fees

- Introduction
 - Comprehensive review and proposal for strengthening City's Mills Act program
 - Verifying reinvestment into the resource
 - Providing prudent fiscal parameters
 - Covering program costs
 - Not an attempt to weaken historic preservation or eliminate an important economic incentive
 - Not a rush to hearing

Mills Act Reforms and Cost Recovery Fees

- Significant public and agency review
 - LU&H review of Nominations backlog and direction to develop cost recovery fees (December 2003)
 - City Council direction to develop fee (Budget hearings 2005)
 - LU&H Review of Proposed Cost Recovery Fees (June 2006)
 - HRB Policy Subcommittee Review of Fee Proposal and Overall Mills Act Program (2003 - 2007)
 - IBA Review of Fee Proposal and Costs of Program (May 2007)
 - Numerous public meetings on reform measures throughout 2008

Mills Act Reforms and Cost Recovery Fees

- City commitment to historic preservation
 - ☐ General Plan policies
 - Historic Preservation Element
 - ☐ New historic districts
 - Islenair, Fort Stockton Line, Mission Hills
 - ☐ New Mills Act contracts (282 last 4 years)
 - 2005 - 45; 2006 - 97; 2007 - 65; 2008 - 75
 - ☐ Historical resources section staffing levels
 - 3.75 Senior Planners and 1.0 Sr. Clerk assigned to Historical Resources as part of Urban Form Division

Mills Act Reforms and Cost Recovery Fees

- Current Incentives
 - ☐ Federal tax credits; Use of State Historic Building Code; Façade easement; Mills Act tax reduction; Conditional Use Permit and other Code flexibility; Design assistance for owners of historical resources through the Historical Resources Board; Façade improvement program for historic commercial properties
- Additional Incentives from General Plan
 - ☐ Use of Transfer of Development Rights; Architectural assistance service; Retention of non-conforming setbacks; Protection and preservation of important archaeology sites on private property; Use of conservation areas to protect neighborhood character through design guidelines

Mills Act Reforms and Cost Recovery Fees

- Mills Act Program - State Law
 - ☐ State program adopted locally (City Council Policy 700-46 adopted July 18, 1995)
 - ☐ Property tax reduction for maintenance and if necessary restoration or rehabilitation of designated historical properties
 - ☐ County Tax Assessor uses formula set by State law (20%-70% savings typical)
 - ☐ 10 year life, renewed annually
 - ☐ Treatment of property according to Secretary of the Interior's Standards

Mills Act Reforms and Cost Recovery Fees

■ Mills Act Program - City Council Policy

□ Contract Requirements

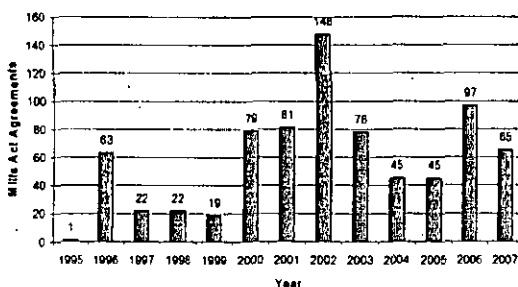
- Resource visible from public right-of-way
- Limited application of resource specific conditions/exclusions

□ Fees \$100 per \$100k assessed value to \$400 maximum

□ Redevelopment Agency approval

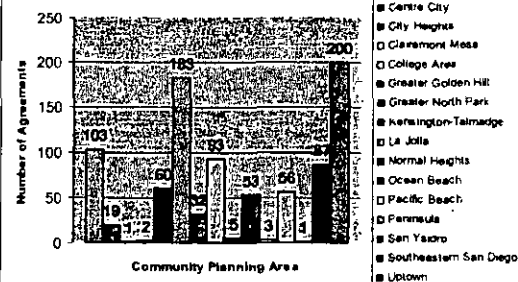
Mills Act Reforms and Cost Recovery Fees

Number of Mills Act Agreements by Year



Mills Act Reforms and Cost Recovery Fees

Number of Mills Act Agreements by Planning Area



Mills Act Reforms and Cost Recovery Fees

- Review of Current Program
 - ☐ Initial focus on fee
 - Cost recovery
 - ☐ Need for monitoring
 - 10+ years since first contract
 - ☐ Aspects of other jurisdictions' programs
 - Program limits
 - Eligibility requirements
 - Application deadline
 - Contract requirements
 - Inspection requirements
 - Fees

Mills Act Reforms and Cost Recovery Fees

- Review of other jurisdiction's programs
 - ☐ Within California
 - Pasadena, Los Angeles, Anaheim, Santa Ana, Escondido, San Jose, Long Beach
 - ☐ Other states with similar tax reduction program
 - Oregon; Arizona
 - ☐ Other large cities with historical resources
 - Philadelphia; Chicago; Boston; New Orleans

Mills Act Reforms and Cost Recovery Fees

- Need for Program Reforms
 - ☐ LDC now includes historical resources regulations
 - ☐ No formal inspection/monitoring requirements
 - ☐ No application required
 - ☐ No requirement for investment of tax savings in historic property
 - ☐ Number of agreements out of proportion to other California cities

Mills Act Reforms and Cost Recovery Fees

■ Objectives of Program Reform

- ☐ Understand and manage fiscal considerations
- ☐ Improve accountability of program
- ☐ Recover costs of implementation

Mills Act Reforms and Cost Recovery Fees

■ Draft Proposal to HRB Policy Subcommittee (January 2008)

- ☐ Annual limit
- ☐ Additional Eligibility Requirements
 - Threatened or deteriorated resource
 - Affordable housing
 - Economic hardship
 - Supports revitalization efforts
- ☐ Application deadline March 31st
- ☐ Contract Requirements
 - Resource visible from public right-of-way
 - Tailored agreement to achieve rehabilitation or restoration
- ☐ Inspection for new agreement and every 5 years
- ☐ Fees
 - \$590 for agreement
 - \$492 monitoring with agreement and every 5 years
 - \$949 enforcement only if needed

Mills Act Reforms and Cost Recovery Fees

■ Presented to Community Planners Committee (March 2008)

- ☐ Revised after Policy Meeting
 - Application deadline
 - Pipeline provisions for properties already designated and in queue for designation at time of revisions (except for fees)

■ Workshop with HRB (April 2008)

- ☐ Objective to review issues and solicit public input
- ☐ Comprehensive review of incentives, including other jurisdictions
- ☐ Guest Speakers
- ☐ 300+ members of public

Mills Act Reforms and Cost Recovery Fees

- HRB Workshop (June 2008)
 - Additional public testimony
- SHPO Review (July 2008)
- HRB Hearing (July 2008)
 - Clarification of proposal
 - SHPO presentation
 - Public testimony
 - HRB Discussion and Motion

Mills Act Reforms and Cost Recovery Fees

- Areas of Some General Agreement
 - Earlier Application deadline
 - Support for June or July deadline
 - 10-year tailored agreements
 - Support for general language for rehabilitation, restoration and maintenance
 - Monitoring/ Inspections
 - Support for minimal monitoring or homeowner self monitoring
 - Fees
 - Support for reasonable fees with low income waiver

Mills Act Reforms and Cost Recovery Fees

- Earlier Application deadline
 - Original proposal required formal application with deadline of March 31st
 - Various other dates during draft review of reforms
 - Revised proposal of formal application by March 31 with designation by December 31st prior year
 - Allows time to address during budget process

Mills Act Reforms and Cost Recovery Fees

- 10-year tailored agreements
 - ☐ Original proposal for annual renewal to achieve necessary rehabilitation or restoration and maintenance, compliance with Standards, visibility of resource, limited site specific conditions
 - ☐ Revised proposal same as above with addition of property owner demonstration of substantial investment of tax savings

Mills Act Reforms and Cost Recovery Fees

- Monitoring/Inspections
 - ☐ Original proposal to monitor existing Mills Act contracts and inspect the exterior of Mills Act properties every 5 years for compliance with Standards and site specific conditions
 - ☐ No revisions to original proposal

Mills Act Reforms and Cost Recovery Fees

- Fees - proposal has not changed since 2006
 - ☐ \$1,185 nomination fee for designation
 - One time only at time of submittal (apply to pending nominations)
 - ☐ \$590 for Mills Act agreement fee
 - One time only at time of application after designation (apply to pending nominations)
 - ☐ \$492 monitoring fee
 - At time of agreement recordation and every 5 years prior to inspection (apply to existing and future Mills Act contracts)
 - ☐ \$949 enforcement fee
 - Only if needed as part of an enforcement action

Mills Act Reforms and Cost Recovery Fees

■ Areas of Disagreement

☐ Annual limit

- Strong public disagreement with any limit to number of new contracts or to amount of new reduction in tax revenue

☐ Eligibility requirements

- Strong public disagreement to any new eligibility requirements

Mills Act Reforms and Cost Recovery Fees

■ Annual limit

☐ Original proposal included numerical or fiscal limit based on past practice

- Average 67 new contracts per year
- Average \$1,340 reduction in property tax reduction per contract per year
- Average \$89,780 average annual reduction

☐ Revised proposal sets fiscal threshold of \$100,000 annual new reduction in tax revenue

- Council can exceed as part of annual budget process

Mills Act Reforms and Cost Recovery Fees

■ Eligibility requirements

☐ Original proposal required at least one of the following new criteria:

- substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;
- enhance opportunities for maintaining or creating affordable housing;
- facilitate preservation and maintenance of a property in cases of economic hardship; or
- support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure

☐ Current proposal has no new eligibility requirements

Mills Act Reforms and Cost Recovery Fees

■ Program Reform Objectives

- ☐ Understand and manage fiscal considerations
 - Fiscal threshold for new contracts
- ☐ Improve accountability of program
 - Demonstrated investment of tax savings into property by owner
 - Monitoring of property by City to assure preservation
- ☐ Recover costs of program implementation

Mills Act Reforms and Cost Recovery Fees

■ Recommendation

- ☐ Approve Mills Act Reforms by amending Council Policy 700-46 to:
 - Add a fiscal threshold of \$100,000 new tax revenue reduction to generate fund on an annual basis
 - Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported
 - Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year
 - Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation
 - Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements
- ☐ Establish cost recovery fees for:
 - Public nominations of individual properties submitted for historic designation pursuant to LDC Section 125.0202(a)
 - Mills Act Program agreement (renewal fee)
 - Mills Act Program monitoring; and,
 - Mills Act Program enforcement
- ☐ Apply the Program reforms and new fees to pending and future nominations and Mills Act Program agreements and the monitoring and enforcement fees to existing and future Mills Act Program agreements
- ☐ Do not adopt fees for processing nominations of historic districts but apply the same Mills Act Program reforms and the agreement, monitoring and enforcement fees to designated historical resources within Districts

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

S501
12/02

TO: CITY ATTORNEY	2. FROM: (ORIGINATING DEPARTMENT) CITY PLANNING & COMMUNITY INVESTMENT	3. DATE November 14, 2008	
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4. SUBJECT: (MAXIMUM OF 10 WORDS) Mills Act Program Reforms and Cost Recovery Fees		
5. PRIMARY CONTACT (NAME, PHONE, MAIL STA.) Cathy Winterrowd, 235-5217, MS 5A	6. SECONDARY CONTACT (NAME, PHONE, MAIL STA.) Jodie Brown, 533-6300, MS 5A	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED: <input checked="" type="checkbox"/>

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	100	DEPARTMENT	065	ORGANIZATION	2085	OBJECT ACCOUNT	73480	JOB ORDER		C.I.P. NUMBER		AMOUNT		9. ADDITIONAL INFORMATION / ESTIMATED COST: Costs associated with the Mills Act Program are proposed to be paid by cost recovery fees as part of this action
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10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
1	ORIGINATING DEPARTMENT	BENMUR KOKSUZ	11/14/08	8	DEPUTY CHIEF	WILLIAM ANDERSON	11/17/08	
2	DSD/EAS	MARSHA BLAKE	11/14/08	9	COO	JIM GOLDSTONE	11/17/08	
3	COUNCIL LIAISON	ED PLANK	11/17/08	10	CITY ATTORNEY	MARIANNE GREENE	11/18/08	
4	AUDITOR			11	ORIGINATING DEPARTMENT	CATHY WINTERROWD	11/14/08	
5	EOCP	EXEMPT PER MEMO DATED 11-15-05		✓	DOCKET COORD: COUNCIL LIAISON: SC 11/18/08			
6	PM		11/18/08		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> ADOPTION
7					COUNCIL DATE: 11/24/08			

11. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

- Adopt a Resolution approving the amendments to Council Policy 700-46 "Mills Act Agreements for Preservation of Historic Property"
- Adopt a Resolution approving the Fee Schedule for Individual Historical Resource Nomination, Mills Act Program Agreement, Mills Act Program Monitoring, and Mills Act Program Enforcement

11A. STAFF RECOMMENDATIONS:

- Approve the Mills Act Reforms and combined new and increased fees from \$400 to \$2267.
- Support amendments to Land Development Code.
- Support amendments to Council Policy 700-46.
- Apply fees and reforms to pending nominations.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Communities with structures over 45 years old.

ENVIRONMENTAL IMPACT: These actions are exempt from CEQA. 15060 (L)(3)

HOUSING IMPACT: No impact on housing or the cost of housing.

OTHER ISSUES: None

REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET

DATE ISSUED:

ATTENTION:

Council President and City Council
Docket of

ORIGINATING DEPT.:

City Planning & Community Investment

SUBJECT:

Mills Act Program Reforms and Cost Recovery Fees

COUNCIL DISTRICTS:

Citywide

STAFF CONTACTS:

Cathy Winterrowd (619) 235-5217 and Jodie Brown
(619) 533-6300

REQUESTED ACTION:

Adopt a series of amendments to Council Policy 700-46, "Mills Act Agreements for Preservation of Historic Property," to reform the City's Mills Act Program and provide improved accountability and annual fiscal thresholds for new agreements; and establish fees associated with historical resources nomination and Mills Act Program components to provide full recovery of staff costs.

STAFF RECOMMENDATIONS:

1. Approve the following Mills Act Program reforms:
 - Add a fiscal threshold of \$100,000 new tax revenue reduction to general fund on an annual basis
 - Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported
 - Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year
 - Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation
 - Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements
2. Establish cost-recovery fees for:
 - public nominations of individual properties submitted for historic designation pursuant to LDC Section 123.0202(a);
 - Mills Act Program agreement (revised fee);
 - Mills Act Program monitoring; and,
 - Mills Act Program enforcement.
3. Apply the Program reforms and new fees to pending and future nominations and Mills Act Program agreements and the monitoring and enforcement fees to existing and future Mills Act Program agreements.
4. Do not adopt fees for processing nominations of historic districts but apply the same Mills Act Program reforms and the agreement, monitoring and enforcement fees to designated historical resources within Districts.

EXECUTIVE SUMMARY:

The current Mills Act Program was adopted by the City Council in July 1995 (Council Policy 700-46) as way to provide an incentive to historic property owners and bring historically significant properties under the City's authority for preservation, at time when there were no historical resources regulations. The current program is very informal with all designated historic properties located outside Redevelopment Areas eligible for Mills Act tax reduction. Specific requirements apply within Redevelopment Areas.

Only a limited number of agreements include additional preservation or rehabilitation requirements and there is no requirement that the tax savings realized through this program be invested in the historic property. There is no formal inspection schedule or monitoring of agreements for compliance with the contract requirements. The Mills Act Program has not been updated or modified since its initial adoption and there is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program. Staff recommends adopting several reform measures to the Mills Act Program that would allow the fiscal impacts to be managed, improve the accountability of the Program and provide cost recovery fees for the processing of designation requests, a Mills Act Program Agreement, monitoring program, and enforcement. Staff recommends the reforms and fees be applied to pending applications and that the fee be required prior to work on each aspect of the program. Additionally, a Mills Act Agreement monitoring program would be established to ensure compliance with individual contracts and the state enabling legislation for the benefit of the public.

FISCAL CONSIDERATIONS:

Without enacting the requested fees, the General Fund is paying for optional services sought by individual property owners. The requested fees will recover the staff costs of this function.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:


In December 2003, Planning Department staff asked the Land Use and Housing (LU&H) Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the committee did not approve a moratorium, it did authorize staff to develop a fee proposal. During review of the Planning Department's Fiscal Year 2006 budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources. On June 21, 2006, the LU&H Committee forwarded the issue of fees for nominations of historical resources and Mills Act Program Agreements to the full City Council with direction for staff to develop options related to the timing of a fee and a way to accommodate those property owners who cannot afford to pay the fee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties. Historic consultants and community representatives expressed concern that any fee, other than a nominal one, would deter property owners from coming forward for historical designation. Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007, with a draft proposal for changes presented in January 2007. There was much public interest and concern about the proposed changes expressed at this meeting and to staff and the Mayor's office following the meeting. The HRB held two workshops, in April and June 2008 and a hearing in July 2008 on the issue of Mills Act reforms. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops and hearing. Many individuals expressed opposition to some or all of the changes being proposed and there was particularly strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are owners of historical properties who are seeking designation and Mills Act agreements who will be subject to revised policy and regulations and will be charged new or revised fees.


William Anderson, FAICP, Deputy Chief
City Planning & Development

ANDERSON/WINTERROWD/sa

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO APPROVING THE AMENDMENTS TO COUNCIL
POLICY 700-46 PERTAINING TO MILLS ACT AGREEMENTS
FOR PRESERVATION OF HISTORIC PROPERTY.

WHEREAS, the Mills Act was enacted in 1972 by the State of California to enable local jurisdictions "to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief;" and

WHEREAS, the Council of the City of San Diego adopted Council Policy 700-46 in 1995 "to provide a monetary incentive to the owners of historically designated in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego;" and

WHEREAS, when the Mills Act Program was set up in 1995, a monitoring system was not established and a program agreement was entered into for a period of ten years, with automatic renewal each year unless one of the parties proposed to end it; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Council Policy No. 700-46 titled "Mills Act Agreements for Preservation of Historic Property," is hereby approved with the following amendments listed below:

- Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year;

- Require the property owner to demonstrate investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation; and
- Establish an inspection schedule for monitoring of Mills Act Program properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements.

BE IT FURTHER RESOLVED, that the City Clerk is instructed to add the aforesaid to the Council Policy Manual.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:als
11/18/08
11/20/08 Cor.Copy
11/26/08 Rev. Copy
Or.Dept:Plannin
R-2009-681

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO APPROVING THE FEE SCHEDULE FOR
INDIVIDUAL HISTORICAL RESOURCE NOMINATION,
MILLS ACT PROGRAM AGREEMENT, MILLS ACT
PROGRAM MONITORING, AND ENFORCEMENT.

WHEREAS, any nomination and designation of a property as a historical resource is a
prerequisite for a property owner seeking a tax reduction through a Mills Act Agreement, and

WHEREAS, the City of San Diego includes no itemized budget for processing voluntary
nominations and designations, but rather these services are absorbed by the City of San Diego
General Fund, and

WHEREAS, the City currently caps the fee to prepare, process, and record a Mills Act
Agreement but such cap prevents the full recovery of these administrative costs; and further such
fee does not recover any costs to monitor or enforce these agreements, and

WHEREAS, because the Mills Act Program provides a meaningful incentive to property
owners to voluntarily nominate and seek designation of historical resources, it is a vital
mechanism to preserve the City's historical resources, NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Council Policy No.
700-46 titled "Mills Act Agreements for Preservation of Historic Property" is hereby amended as
set forth in the Council Policy filed in the office of the City Clerk as Document No.

RR-_____.

BE IT FURTHER RESOLVED, that the Council hereby authorizes the adoption of the Fee Schedule provided in Report No. 08-176, a copy of which is on file in the office of the City Clerk as Document No. RR-_____, and recited as follows:

- \$1,185 for the Individual Historical Resource Nomination; and
- \$590 for the Mills Act Program agreement; and
- \$492 for Mills Act Program monitoring with the initial Mills Act Program agreement and every five years thereafter; and
- \$949 for Mills Act Program enforcement, as needed.

BE IT FURTHER RESOLVED, that the Council hereby authorizes the City Manager to adjust the said Fee Schedule from time to time to recover increases in the administrative costs of the program.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Marianne Greene
Marianne Greene
Deputy City Attorney

MG:als
11/18/08
11/20/08 Cor.Copy
11/26/08 Rev.Copy
Or.Dept:Planning
R-2009-682

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

S501
12/02**Yepiz, Lauren**

From: CLK City Clerk
Sent: Thursday, November 20, 2008 7:58 AM
To: Atkins, Councilmember; Faucett, Aimee; Faulconer, Council Member Kevin; Frye, Donna; Hueso, Councilmember Ben; Lujan, Magdalena; Madaffer, Councilmember Jim; Maienschein, Councilmember; Peters, Councilmember Scott; Pickens, Sonia; Soria, Patricia; Vetter, Gary; Yepiz, Lauren; Young, Anthony
Subject: FW: November 24th Agenda, ITEM-202, Mills Act Program Reforms
Attachments: Narwold.pdf

From: Margaret B. McCann [mailto:margaretbeth@cox.net]
Sent: Wednesday, November 19, 2008 7:51 PM
To: Maienschein, Councilmember
Cc: Nguyen, Khoa; CLK City Clerk
Subject: November 24th Agenda, ITEM-202, Mills Act Program Reforms

Dear Councilmember Maienschein,

I would like you to consider carefully the information that is attached prior to the special Council session on Monday evening. The Mayor is proposing to adopt a series of amendments to Council Policy 700-46, "Mills Act Agreements for Preservation of Historic Property." The effort to reform this program is based on a flawed assumption – that the Mills Act program causes a reduction in tax revenue to the City. The mathematical model used by Staff to reach that conclusion is too simplistic to be of any value.

A valid model of the fiscal impact of the Mills Act on the City's tax revenue was developed by Professors Andrew Narwold, Jonathan Sandy and Charles Tu from the University of San Diego's School of Business, Department of Economics and Public Policy. This is the same department in which economist Alan Gin is a member. Professors Narwold et al published a paper that specifically analyzed the impact of the Mills Act on the City of San Diego's tax revenues. That paper, "Historic Designation and Residential Property Values: *International Review of Real Estate*, 11 (1), 83-95" is attached. The conclusion of the research is that an historically designated house with a Mills Act contract raises the property values of the houses surrounding it, leading to an increase in property tax revenue for the neighborhood. So while an individual house with a Mills Act contract may enjoy a decrease in property taxes, it is more than offset by the increase in the property taxes paid by its neighbors as a result of the halo effect that an historic property has on a neighborhood.

On the agenda for this item, under Staff Supporting Information, is this description, "... there is a desire on the part of the City to improve accountability of the overall program and to *understand and manage the fiscal impacts* of the program." It is important for you to understand that during each of the public hearings on this matter, in person and in writing, numerous people have advised Staff of the true fiscal impacts of the Mills Act program and the halo effect as described by Narwold et al. It is apparent that Staff has either failed to grasp the significance of the research and analysis performed by the leading economists in this area, or are willfully ignoring the data and findings. There can be no other explanation for why Staff would proposed a cap on Mills Act contracts when it is clear that this

11/20/2008

program is a money maker for the City.

Specifically, the proposed changes would add a fiscal threshold of \$100,000 new tax revenue reduction to the general fund on an annual basis, which is essentially a cap on Mills Act contracts. The reforms also seek cost-recovery fees. Please understand that the Mills Act program is the only incentive, fiscal or otherwise, available to single family homeowners to encourage historic preservation. It is not logical to charge a fee for a program that itself provides a fiscal incentive, especially when that program actually increases overall property tax revenue. That's like awarding a bonus, then making the recipient pay to get the bonus. I believe there are thousands of Internet scams in circulation that do just that.

Owners spend far more in restoration than what is saved through property tax reductions that are granted by a Mills Act contract. The financial and labor investment that an owner puts into a single home serves to raise the property values of all the homes surrounding it in the neighborhood.

- The Mills Act generates additional tax revenue from the properties surrounding a designated historical resource for a net increase, not a net loss.
- Per the Narwold report, under the Mills Act, **the overall taxable basis for the neighborhood increases** by \$1.8 million for each historical home. Studies show that local governments might expect a **net tax revenue gain of \$14,000 per house per year.**
- The net effect of the Mills Act for neighborhoods and for the City of San Diego is increased property values and increased property tax revenue. Reducing the number of Mills Act contracts directly reduces the tax revenue that can be generated by property surrounding historically designated homes.

If the City wants to reform the Mills Act program, here are a few suggestions:

- Implement additional incentives for privately owned residences, such as waiving building permit and inspection fees for restoration work directed by Historic Resources Board staff to comply with a Mills Act contract.
- Create an ordinance that requires real estate brokers to disclose pertinent information, as part of escrow instructions, to buyers of historically designated houses with and without Mills Act contracts. The buyer should be informed of, and acknowledge, the requirements and obligations with respect to maintenance and/or restoration of the historical property.
- Provide outreach to underserved communities; Staff should attend community meetings & public library presentations in communities with few historical designations and ensure everyone knows about the Mills Act benefits.

Thank you for taking the time to consider this information.

Maggie McCann

Heart of Kensington

11/20/2008

4650 Edgeware Road

San Diego, CA 92116

619-584-2896

<<...>>

Historic Designation and Residential Property Values

Andrew Narwold*

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Jonathan Sandy

Professor of Economics, School of Business Administration, University of San Diego,
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Charles Tu

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The State of California enacted the Mills Act in 1972. This act allows local municipalities the option of setting up a historic designation program. The main feature of the program is to allow the owners of historic buildings a reduction in their property taxes in return for an agreement to not alter the exterior façade of the designated building. This paper uses hedonic regression analysis to estimate the impact of the historic designation on the value of single-family residences in the City of San Diego. The results suggest that the designation creates a 16 percent increase in housing value. This is higher than the capitalization of the property tax savings would suggest, implying market value in the historic designation itself. The Mills Act represents an innovative approach to historic structure management and may provide guidance to governments elsewhere in the U.S. as well as internationally when designing historic preservation programs.

Keywords

Historic designation; housing values; hedonic model

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1. Introduction

In 1972 the State of California passed a law that since has become known as the Mills Act,¹ named after the author of the legislation, California State senator James R. Mills. Before becoming a state senator, James Mills had made his name in San Diego as a historian, author and preservationist. The primary purpose of the act was to provide incentives for property owners to preserve and rehabilitate historically significant structures. The Mills Act allows for cities and counties to create programs designed to aid in the historic preservation of structures. The program allows for a reduction in property taxes on historically designated properties in return for a commitment by the owners of the property to maintain the property without significantly altering its appearance.

The details of the Mills Act require a participating local government to enter into a contract with the owner of the historic building. This contract has several key features. The contract is valid for ten years, and is automatically renewed annually, unless notice to cancel is given by either party, in which case, the contract will lapse at the end of the ten years. Under the terms of the contract, the property owner agrees to maintain and rehabilitate, if necessary, the external façade of the structure. In return, the property tax for the structure is reduced.

In general, property taxes in California are calculated at approximately one percent of the tax basis of a property. Upon the sale of the property (or significant alteration), the tax basis is adjusted to full market value; however, Proposition 13 limits the annual increase in property taxes to a maximum of two percent in a year when the property is not sold. Under the Mills Act, the tax basis for the property is based either on the income produced by the building for rented structures, or the income producing potential for owner-occupied structures. This income stream is then converted into a value for the structure based on a capitalization rate set by the county assessor's office. This imputed value then becomes the tax basis for the purposes of property tax assessment. The City of San Diego examined the savings to homeowners due to Mills Act contracts in 2005. For each property covered by Mills Act contracts, the City estimated the difference between what the property owners were paying, and what they would have had to pay without the benefit of the Mills Act contract. The property tax savings from entering into a Mills Act contract for a historic house ranged from 40 to 80 percent, with an average savings of 49 percent.²

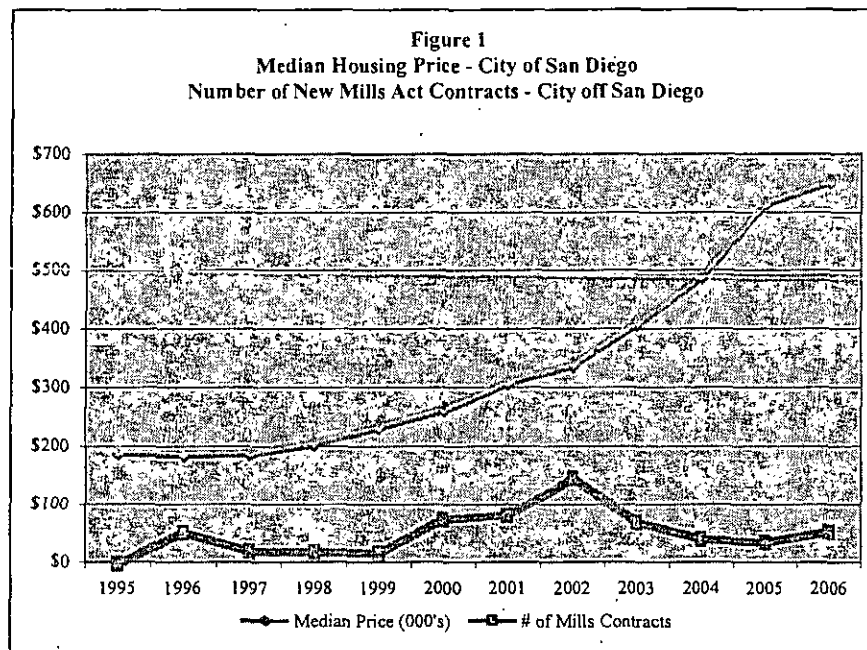
Although there are few exact numbers, a survey in 1995 found that 39 cities were writing Mills Act contracts with a total of 119 statewide. Currently there are an estimated 89 cities and 1,662 Mills Act contracts statewide according to the California Office of Historic Preservation. The number of contracts provided is the

¹ The actual legislation is contained in the California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4 and the California Government Code, Article 12, Sections 50280 – 50290.

² There is an extensive literature on how environmental issues (such as air quality, water quality and undesirable land uses) on housing values. For a survey of the literature, see Boyle and Kiel (2001).

lower bound of the actual number of contracts as there is no enforcement to insure that all contracts are recorded with the State of California. The City of San Diego has by far the largest number of Mills Act contracts with more than 650 structures covered. The City of Los Angeles is second with around 200 contracts. The City of Anaheim is third with approximately 125 contracts.

The City of San Diego's experience is probably similar to that of most other cities and counties operating under the Mills Act. The City of San Diego did not start writing Mills Act contracts until 1995, though the Historical Resources Board has been assigning historic designations since 1967. Figure 1 shows the relationship between the number of Mills Act contracts written each year since 1995 as well as the median housing price for San Diego. Not surprisingly, the City of San Diego experienced a large upswing in the number of Mills Act contracts in the late 1990's as housing prices started to soar. As with many cities, the City of San Diego has been experiencing financial difficulties since 2002. This has led to a backlog of over 100 structures waiting to be evaluated for historic significance.



This paper investigates the impact of historic designation on single-family housing values by estimating the price differential between houses covered by Mills Act contracts and those with comparable attributes but without the designation. The rest of the paper is organized as follows. The next section reviews the literature on historic designation and its effect on property values. The following two sections

discuss the methodology and data used in the analysis. Empirical results are then presented, followed the conclusion.

2. Literature Review

California's approach to historic preservation through tax benefits to specific properties through the Mills Act is very unusual. In other jurisdictions, the typical scenario is for a local historic resources board to identify a geographic area as a historic district. All buildings within that district then have the same level of protection, benefits and constraints. The issue then becomes whether the creation of a historic district with positive externalities arising from a consistent historic "look" outweigh the costs associated with limitations placed on remodeling and redevelopment of housing stock within the district. The previous literature on the value of historic designation has focused for the most part on analyzing this type of historic designation.

Asabere et al. (1989) provide one of the first studies of the effect of architecture and historic zoning on housing value. Looking at the town of Newburyport in northeastern Massachusetts, the authors estimate the impact of both type of *architecture and historic zoning district* on the value of 520 housing units over a three-year period. Using hedonic regression analysis, Asabere et al. identify eight possible functional forms for housing value. Their results suggest that architectural style does have a positive and significant effect on housing values, with buyers willing to pay premiums for older homes built in the colonial, federal, garrison and Victorian styles. However, location in the historic district does not seem to convey any added value to the housing price in and of itself. The results suggest that historic district location is positive and significant in only one of their eight specifications.

The effect of historic designation on property values is examined by Ford (1989) using data from Baltimore, Maryland. The City of Baltimore has approached historic designation by creating historic districts. A total of fifteen such districts were created between 1964 and 1985. By examining housing prices in both 1980 and 1985, Ford tests two major hypotheses. She finds that the prices of houses in areas that will eventually be designated historic districts are not significantly different from those in non-historic districts. However, her results suggest that houses within designated historic districts do command a premium. Furthermore, Ford tests whether the appreciation in housing prices were greater the longer the property had been in a historic district. Interestingly, Ford finds no evidence to dispute the hypothesis that the value of historic designation is capitalized into the price of the structure upon designation.

Coffin (1989) examines the issue of historic district valuation using Aurora and Elgin, Illinois: two western suburban cities of Chicago. Coffin's sample includes 120 sales of homes in Elgin, of which 47 are in the historic district, and 243 units in Aurora, 62 of which are in the historic district. Coffin asserts that location in the

historic district increases housing price by 6–7%. However, his results are at the extreme edge of typically accepted statistical significance. For Aurora, he modified his designation of historic significance to identify the historic district homes that are located in low-income Census tracts. This surely increased the significance of the historic district variable as historic designation in a low-income neighborhood sends an additional signal about housing stock quality.

Asabere and Huffman (1991) take an innovative approach by examining the effect that historic designation has on undeveloped land. Using data from Philadelphia, the authors identify 100 transactions involving vacant land sales over the years 1987 to 1989. Their use of Philadelphia as a case study is significant as Philadelphia has limited its ability to designate historic sites solely to specific structures. Therefore, all historic districts within Philadelphia are federally created. Under the federal framework, any development of vacant land need only meet local requirements. This implies that there are no additional constraints on development of vacant land in these historic districts. Not surprisingly, this lack of constraints leads to a much higher valuation of the land in these districts. The authors estimate that vacant land for residential purposes is valued 131% higher in historic districts. They also find no significant difference in the valuation of nonresidential properties.

Asabere and Huffman (1994) extend their work in Philadelphia to estimate the effect of historic district designation to developed residential property. The authors identify a sample of 120 houses that are sold over the period of 1986 to 1990. The authors find that houses sold in federally designated historic districts command a premium of approximately 26%. This benefit is not dependent on any investment tax credits that are typically associated with structures in federally designated historic district.

Clark and Herrin (1997) examine the effect of historic preservation districts in the city of Sacramento, California over the years 1990–1994. Sacramento has identified 20 historic preservation districts. Over the study period the authors identify 683 housing sales, of which 58 occurred in 6 of the districts. Using hedonic regression analysis, the authors find that houses within the districts sell for up to 17% more. From this, Clark and Herrin argue that the restrictions placed on housing redevelopment and rehabilitation in these districts is not particularly onerous.

Abilene, Texas serves as the case study for Coulson and Leichenko (2001). Abilene is somewhat unusual in that historic designation is conferred on individual properties rather than historic districts. The authors use this distinction to estimate the value of historic designation on a particular property. They find that historic designation has a positive and significant impact on the value of a property. They estimate that historic designation brings about an increase in house value of approximately 17%. The authors attempt to disentangle the tax effects and whether the property is listed on a national registry with little success. In addition, the authors provide evidence that suggests that there is a positive externality associated with historic designation. The results suggest that for each additional historically designated house within the census tract, the value of a house in that census tract increases by 0.14%.

One possible drawback from the majority of the previously cited studies is the reliance on valuing historic designation within a particular market. Leichenko et al. (2001) use data from nine Texas cities to try to rectify this shortcoming. The cities in their sample follow one of three historic designation strategies. Some cities identify individual historic structures, other cities use only historic districts, and one city uses both approaches. The authors find that the value of historic designation increases property values from between 5 and 20 percent. The results were mixed regarding the valuation of national historic designation, state and local designation. In two cities, national historic designation significantly increases property values, while in another city the effect was not statistically significant.

Two studies in Turkey indicate a growing international recognition of the importance of alternatives to state ownership of historically significant structures. Demet and Cengiz (2000) examine the options available to preserve and restore parts of the community of Bursa-Cumalikizik, Turkey. The authors recognize that the traditional approach of state directed rehabilitation and preservation is unlikely to succeed without active participation of the population within the district. Likewise, Akansel and Minez (2006) examine the same issues in the Kaleici region of Edirne, Turkey. Although the authors conclude that "funds providing financial support to the owners of these houses in the settlement should be set up in order to protect these houses" (p. 10), they do not propose a system to achieve that goal.

3. Methodology

This study uses the hedonic price model developed by Rosen (1974) to measure the effect of tax savings from the Mills Act historic designation on single-family home values. This methodology is well developed and accepted in real estate and housing economics research. For example, it has been used to assess the impact of numerous factors on housing values, such as environmental issues,³ school quality,⁴ and special land uses.⁵ In the hedonic model, housing is considered a bundle of attributes, including site, structural, quality, location and market characteristics. The number and type of attributes embodied in a house distinguish it from other properties and determine its value.

Because housing attributes are not traded individually, the value of an attribute can not be directly observed. In order to estimate the value of each housing characteristic, multiple regression analysis is utilized. Suppose there are i site and

³ There is an extensive literature on how environmental issues (such as air quality, water quality and undesirable land uses) on housing values. For a survey of the literature, see Boyle and Kiel (2001).

⁴ For example, see Mitchell (2000), and Clark and Herrin (2000).

⁵ For example, Colwell, Dehring and Lash (2000) investigate the impact of group homes on neighborhood property values; Carroll, Clauretic and Jensen (1996) study the effects of neighborhood churches on residential property values; and Irwin (2002) examines the influence of open space on residential housing values.

structural attributes, j location characteristics, and k market factors in the hedonic model, the semi-log regression equation can be written as:

$$\ln(P) = \alpha + \sum_{i=1}^I \beta_i S_i + \sum_{j=1}^J \lambda_j L_j + \sum_{k=1}^K \mu_k M_k + \varepsilon \quad (1)$$

where P is the sales price of a house, β , λ and μ are coefficients, and ε is an error term. The coefficient of an attribute is interpreted as the percentage change in property value given one unit increase in the attribute. In this study, a dummy variable is used to identify houses that are covered by Mills Act contracts. The coefficient of this variable represents the effect of historic designation on the value of a house.

4. Data

Data were collected on sales of single-family detached housing in zip codes 92103 and 92104 in San Diego, California from January 1, 2000 through December 31, 2006. The two zip codes were selected for several reasons. They contain some of San Diego's oldest neighborhoods and therefore have a relatively large proportion of historically designated homes. In fact, nearly 40% of the structures that are currently covered by Mills Act contracts in the City of San Diego are located in these two zip codes. The housing stock in the neighborhoods has sufficient variation in physical attributes to allow a meaningful hedonic analysis. Additionally, as these zip codes are contiguous, many of the neighborhood characteristics such as school quality, proximity to downtown and beaches, and crime rates do not vary greatly.

During the seven-year period, 2,045 transactions of single-family residences with valid property information are retrieved from DataQuick's PropertyPro CDs.⁶ To ensure that the data reflects the housing market equilibrium and to prevent coding errors and non-arm's-length transactions from unduly influencing the analysis, a set of data cleansing criteria are utilized.⁷ Approximately 4.5% of the observations are excluded, resulting in a final dataset with 1,953 valid observations. Of these houses, 25 had received historic designation by the City of San Diego and the owners had signed a Mills Act contract.⁸ Table 1 presents the descriptive statistics for the

⁶ Transactions with missing data (such as sales price, lot size, square footage of living area, number of bathrooms, number of bedrooms, and year built) are excluded.

⁷ An observation is removed if one of the following criteria is met: 1) the year of sale is earlier than the year built, 2) the lot size is greater than an acre or less than 500 square feet, and 3) the number of bedrooms is greater than 5. The price per square foot (p/sf) is also taken into account to prevent coding errors and exclude non-arm's-length transactions. The average p/sf in the two zip codes during the study period is \$432 with a standard deviation of \$134. Observations with p/sf three standard deviations higher (\$834) or lower (\$30) than the average are also removed.

⁸ The 25 properties covered by the Mills Act contracts represent 1.28% of the sample, while historically designated single-family houses in the two zip codes (261 properties) represent 1.24% of the stock of single-family housing.

dataset, with Panel A showing the historically designated houses and Panel B the rest of the sample.

Table 1 Descriptive Statistics

<i>Panel A Historically Designated Houses (n=25)</i>				
Variable	Mean	Std. Dev.	Min.	Max.
Sales Price (000's)	833.2	365.3	333.0	1,850
No. of Bedrooms	2.87	0.74	2.00	4.00
No. of Bathrooms	1.70	0.64	1.00	3.50
Living Area (ft ²)	1,721.3	587.7	870	3,169
SQ FT of Lot	7,043.1	4,446.1	4,500	24,829
# Garage Spaces	1.14	0.65	0.00	2.00
Avail. of Pool	0.00	0.00	0.00	0.00
Age of Property	68.70	18.91	5.00	93.00

<i>Panel B Non-historically designated houses (n=1,928)</i>				
Variable	Mean	Std. Dev.	Min.	Max.
Sales Price (000's)	569.8	303.9	80.0	2,500
No. of Bedrooms	2.59	0.78	1.00	5.00
No. of Bathrooms	1.60	0.76	1.00	5.00
Living Area (ft ²)	1,367.1	655.1	405	5,790
SQ FT of Lot	5,467.0	3,176.2	649	37,461
# Garage Spaces	1.22	0.72	0.00	5.00
Avail. Pool	0.06	0.24	0.00	1.00
Age of Property	67.01	18.98	0.00	102.00

Somewhat surprisingly, the historically designated houses are not that much older than the other houses, with an average age of 68.7, compared to 67.0 for the rest of the sample. Overall, the historically designated houses are slightly larger (in terms of square footage, number of bedrooms/bathrooms, and lot size) and sell on average for \$263,000 more than those without historic designation.

5. Model and Results

The hedonic model (Equation 1) is estimated with the dataset to determine the implicit price of each housing attribute. In this study, site and structural attributes include the number of bedrooms, the number of bathrooms, the square footage of living area, size of lot, the number of garage spaces, availability of a swimming pool, and the age of the property. To control for neighborhood effects within the two zip codes, a set of 24 dummy variables are employed to represent the census tract in which a property is located. As the San Diego housing market experienced remarkable appreciation during the study period, a group of dummy variables that indicate the quarter in which a transaction occurred is also included to take into account the housing market trend. Additionally, a dummy variable is used to identify houses with historic designation. The value of the variable is one for houses that are covered by Mills Act contracts, and zero otherwise. The coefficient of this variable indicates the impact of historic designation on the value of a house, after other housing attributes have been controlled for.

Table 2 presents the estimation results of two hedonic models.⁹ Model 1 uses the log of sales price as the dependent variable. The model has a strong explanatory power with an adjusted R^2 of 83.2%. Most site and structural variables carry the expected sign and are statistically significant. For example, adding 100 square feet of living space increases the housing value by approximately 2.7%, and each additional bedroom adds 3.2% value to the house. The coefficient of property age is positive, suggesting that buyers in this market are willing to pay more for older houses; however, the difference is not statistically insignificant.

⁹ Due to the large number of variables, parameter estimates of the census tract and quarter dummy variables are not presented in the table, but are available from the authors.

Table 2 Estimation Results of Hedonic Model (n = 1,953)

Variable	Model 1: Semi-log Form	
	Coefficients	t value
Intercept	11.9277	77.92
No. of Bedrooms	0.0317	3.85
No. of Bathrooms	0.0181	1.75
SQ FT of Living Area (10^{-3})	0.2724	18.95
SQ FT of Lot (10^{-3})	0.0076	4.41
No. of Garage Spaces	0.0340	4.86
Availability of Pool	0.0851	4.27
Age of Property (10^{-3})	0.3214	1.11
Historic Designation	0.1484	3.44
Adjusted R ²	0.8322	

Variable	Model 2: Linear Form	
	Coefficients	t value
Intercept	154,431	1.49
No. of Bedrooms	567.70	0.10
No. of Bathrooms	26,669	3.80
SQ FT of Living Area (10^{-3})	220.12	22.64
SQ FT of Lot (10^{-3})	5.88	5.02
No. of Garage Spaces	11,036	2.33
Availability of Pool	82,538	6.12
Age of Property (10^{-3})	102.71	0.53
Historic Designation	120,985	4.15
Adjusted R ²	0.7995	

The variable of interest is the dummy variable for Mills Act historic designation. The variable has a coefficient of 0.1484 and a t-value of 3.44. This result reveals

that historic designation and the corresponding Mills Act contract increase the value of a single-family home by approximately 16.0%.¹⁰

A number of additional tests are performed to assess the robustness of the empirical results. The variance inflation factor (VIF) is used to ensure that the estimation results are not affected by multicollinearity. Several different model specifications (for example, log and quadratic forms for property age and lot size) are also considered. The magnitude and significance level of the Mills Act variable remains virtually unchanged. Additionally, a linear form regression (where the sales price is the dependent variable) is estimated. The coefficient of the Mills Act variable is again positive and highly significant (see Model 2 in Table 2). These tests confirm that with physical attributes, housing market trends, and neighborhood effects all controlled for, the historic designation significantly increases the value of a property.

6. Conclusion

The State of California enacted the Mills Act in 1972. This program provides owners of historic buildings a reduction in property taxes in return for an agreement to not alter the exterior façade of the designated building. This paper studies the impact of such historic designation on the value of single-family homes. Using hedonic regression analysis and housing transactions in San Diego between 2000 and 2006, the study estimates the price differential between houses with Mills Act historic designation and comparable houses without the designation. The empirical findings suggest that the historic designation results in a 16 percent increase in housing value.

Theory suggests that the value of any tax benefits should be capitalized into the price of the home. The degree to which this benefit is not fully capitalized represents a cost to the homeowner for agreeing not to alter the building; on the other hand, a price differential exceeding the capitalized tax benefit implies value in the historic designation itself. In San Diego the tax savings on houses that are covered by Mills Act contracts range from 40 to 80 percent, with an average of 49 percent. Given a one-percent property tax rate, the price differential identified in the empirical analysis is likely to be higher than the capitalization of property tax savings. Further research with more detailed data is necessary to investigate the sources of the additional value.

The importance of historic preservation has received growing international recognition and many countries have developed programs to provide tax incentives. Traditional approaches have consisted primarily of either public ownership of the structures or the creation of historic districts. California's approach to historic preservation through the Mills Act provides an alternative model. Communities

¹⁰ For a dummy variable, the percentage effect is equal to $(\text{Exp}(c)-1)$, where c is the parameter estimate of the dummy variable (see Halvorsen and Palmquist, 1980).

gain by making sure historically significant structures are preserved while the owners of those structures are compensated with tax savings and higher property values. The level of participation in the Mills Act program indicates that it has been successful in encouraging the owners of historically significant structures to preserve and maintain their buildings. The Mills Act can therefore serve as a template of how historic preservation may be achieved elsewhere in the United States as well as internationally.

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S501
12/2

From: CLK City Clerk
Sent: Friday, November 28, 2008 8:08 AM
To: Atkins, Councilmember; Faucett, Aimee; Faulconer, Council Member Kevin; Frye, Donna; Hueso, Councilmember Ben; Lujan, Magdalena; Madaffer, Councilmember Jim; Maienschein, Councilmember; Peters, Councilmember Scott; Pickens, Sonia; Soria, Patricia; Vetter, Gary; Yepiz, Lauren; Young, Anthony
Subject: FW: Agenda, December 2, ITEM-S501: Mills Act Program Reforms and Cost Recovery Fees.
Attachments: Narwold.pdf

From: Margaret B. McCann [mailto:margaretbeth@cox.net]
Sent: Wednesday, November 26, 2008 9:43 PM
To: Atkins, Councilmember; Peters, Councilmember Scott; Young, Anthony; Madaffer, Councilmember Jim; Faulconer, Council Member Kevin; Maienschein, Councilmember; Hueso, Councilmember Ben; Frye, Donna; CLK Hearings1
Cc: Mayor, Office of the; SDAT City Attorney; CLK City Clerk
Subject: Agenda, December 2, ITEM-S501: Mills Act Program Reforms and Cost Recovery Fees.

Councilmembers:

In case you have misplaced your copy of the Narwold report, I am attaching a copy for your perusal over the holiday weekend. As you have heard before, the Mills Act program generates tax revenue for the City. The amount generated more than offsets the incentive tax benefit to individual homeowners. This is a wonderful program for redevelopment that has proven success. Please take the time to read Professors Narwold, Sandy and Tu's published report and understand the great benefits that this program represents for our City.

Respectfully,

Margaret B. McCann

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San Diego, CA 92116

619-584-2896

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Historic Designation and Residential Property Values

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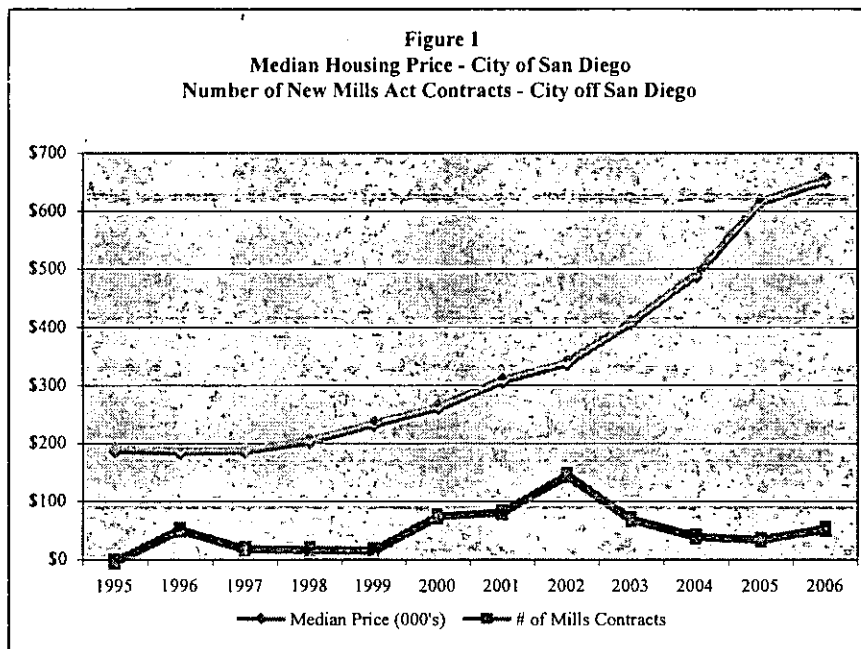
Although there are few exact numbers, a survey in 1995 found that 39 cities were writing Mills Act contracts with a total of 119 statewide. Currently there are an estimated 89 cities and 1,662 Mills Act contracts statewide according to the California Office of Historic Preservation. The number of contracts provided is the

¹ The actual legislation is contained in the California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4 and the California Government Code, Article 12, Sections 50280 – 50290.

² There is an extensive literature on how environmental issues (such as air quality, water quality and undesirable land uses) on housing values. For a survey of the literature, see Boyle and Kiel (2001).

lower bound of the actual number of contracts as there is no enforcement to insure that all contracts are recorded with the State of California. The City of San Diego has by far the largest number of Mills Act contracts with more than 650 structures covered. The City of Los Angeles is second with around 200 contracts. The City of Anaheim is third with approximately 125 contracts.

The City of San Diego's experience is probably similar to that of most other cities and counties operating under the Mills Act. The City of San Diego did not start writing Mills Act contracts until 1995, though the Historical Resources Board has been assigning historic designations since 1967. Figure 1 shows the relationship between the number of Mills Act contracts written each year since 1995 as well as the median housing price for San Diego. Not surprisingly, the City of San Diego experienced a large upswing in the number of Mills Act contracts in the late 1990's as housing prices started to soar. As with many cities, the City of San Diego has been experiencing financial difficulties since 2002. This has led to a backlog of over 100 structures waiting to be evaluated for historic significance.



This paper investigates the impact of historic designation on single-family housing values by estimating the price differential between houses covered by Mills Act contracts and those with comparable attributes but without the designation. The rest of the paper is organized as follows. The next section reviews the literature on historic designation and its effect on property values. The following two sections

discuss the methodology and data used in the analysis. Empirical results are then presented, followed the conclusion.

2. Literature Review

California's approach to historic preservation through tax benefits to specific properties through the Mills Act is very unusual. In other jurisdictions, the typical scenario is for a local historic resources board to identify a geographic area as a historic district. All buildings within that district then have the same level of protection, benefits and constraints. The issue then becomes whether the creation of a historic district with positive externalities arising from a consistent historic "look" outweigh the costs associated with limitations placed on remodeling and redevelopment of housing stock within the district. The previous literature on the value of historic designation has focused for the most part on analyzing this type of historic designation.

Asabere et al. (1989) provide one of the first studies of the effect of architecture and historic zoning on housing value. Looking at the town of Newburyport in northeastern Massachusetts, the authors estimate the impact of both type of architecture and historic zoning district on the value of 520 housing units over a three-year period. Using hedonic regression analysis, Asabere et al. identify eight possible functional forms for housing value. Their results suggest that architectural style does have a positive and significant effect on housing values, with buyers willing to pay premiums for older homes built in the colonial, federal, garrison and Victorian styles. However, location in the historic district does not seem to convey any added value to the housing price in and of itself. The results suggest that historic district location is positive and significant in only one of their eight specifications.

The effect of historic designation on property values is examined by Ford (1989) using data from Baltimore, Maryland. The City of Baltimore has approached historic designation by creating historic districts. A total of fifteen such districts were created between 1964 and 1985. By examining housing prices in both 1980 and 1985, Ford tests two major hypotheses. She finds that the prices of houses in areas that will eventually be designated historic districts are not significantly different from those in non-historic districts. However, her results suggest that houses within designated historic districts do command a premium. Furthermore, Ford tests whether the appreciation in housing prices were greater the longer the property had been in a historic district. Interestingly, Ford finds no evidence to dispute the hypothesis that the value of historic designation is capitalized into the price of the structure upon designation.

Coffin (1989) examines the issue of historic district valuation using Aurora and Elgin, Illinois: two western suburban cities of Chicago. Coffin's sample includes 120 sales of homes in Elgin, of which 47 are in the historic district, and 243 units in Aurora, 62 of which are in the historic district. Coffin asserts that location in the

historic district increases housing price by 6–7%. However, his results are at the extreme edge of typically accepted statistical significance. For Aurora, he modified his designation of historic significance to identify the historic district homes that are located in low-income Census tracts. This surely increased the significance of the historic district variable as historic designation in a low-income neighborhood sends an additional signal about housing stock quality.

Asabere and Huffman (1991) take an innovative approach by examining the effect that historic designation has on undeveloped land. Using data from Philadelphia, the authors identify 100 transactions involving vacant land sales over the years 1987 to 1989. Their use of Philadelphia as a case study is significant as Philadelphia has limited its ability to designate historic sites solely to specific structures. Therefore, all historic districts within Philadelphia are federally created. Under the federal framework, any development of vacant land need only meet local requirements. This implies that there are no additional constraints on development of vacant land in these historic districts. Not surprisingly, this lack of constraints leads to a much higher valuation of the land in these districts. The authors estimate that vacant land for residential purposes is valued 131% higher in historic districts. They also find no significant difference in the valuation of nonresidential properties.

Asabere and Huffman (1994) extend their work in Philadelphia to estimate the effect of historic district designation to developed residential property. The authors identify a sample of 120 houses that are sold over the period of 1986 to 1990. The authors find that houses sold in federally designated historic districts command a premium of approximately 26%. This benefit is not dependent on any investment tax credits that are typically associated with structures in federally designated historic district.

Clark and Herrin (1997) examine the effect of historic preservation districts in the city of Sacramento, California over the years 1990–1994. Sacramento has identified 20 historic preservation districts. Over the study period the authors identify 683 housing sales, of which 58 occurred in 6 of the districts. Using hedonic regression analysis, the authors find that houses within the districts sell for up to 17% more. From this, Clark and Herrin argue that the restrictions placed on housing redevelopment and rehabilitation in these districts is not particularly onerous.

Abilene, Texas serves as the case study for Coulson and Leichenko (2001). Abilene is somewhat unusual in that historic designation is conferred on individual properties rather than historic districts. The authors use this distinction to estimate the value of historic designation on a particular property. They find that historic designation has a positive and significant impact on the value of a property. They estimate that historic designation brings about an increase in house value of approximately 17%. The authors attempt to disentangle the tax effects and whether the property is listed on a national registry with little success. In addition, the authors provide evidence that suggests that there is a positive externality associated with historic designation. The results suggest that for each additional historically designated house within the census tract, the value of a house in that census tract increases by 0.14%.

One possible drawback from the majority of the previously cited studies is the reliance on valuing historic designation within a particular market. Leichenko et al. (2001) use data from nine Texas cities to try to rectify this shortcoming. The cities in their sample follow one of three historic designation strategies. Some cities identify individual historic structures, other cities use only historic districts, and one city uses both approaches. The authors find that the value of historic designation increases property values from between 5 and 20 percent. The results were mixed regarding the valuation of national historic designation, state and local designation. In two cities, national historic designation significantly increases property values, while in another city the effect was not statistically significant.

Two studies in Turkey indicate a growing international recognition of the importance of alternatives to state ownership of historically significant structures. Demet and Cengiz (2000) examine the options available to preserve and restore parts of the community of Bursa-Cumalikizik, Turkey. The authors recognize that the traditional approach of state directed rehabilitation and preservation is unlikely to succeed without active participation of the population within the district. Likewise, Akansel and Minez (2006) examine the same issues in the Kaleici region of Edirne, Turkey. Although the authors conclude that "funds providing financial support to the owners of these houses in the settlement should be set up in order to protect these houses" (p. 10), they do not propose a system to achieve that goal.

3. Methodology

This study uses the hedonic price model developed by Rosen (1974) to measure the effect of tax savings from the Mills Act historic designation on single-family home values. This methodology is well developed and accepted in real estate and housing economics research. For example, it has been used to assess the impact of numerous factors on housing values, such as environmental issues,³ school quality,⁴ and special land uses.⁵ In the hedonic model, housing is considered a bundle of attributes, including site, structural, quality, location and market characteristics. The number and type of attributes embodied in a house distinguish it from other properties and determine its value.

Because housing attributes are not traded individually, the value of an attribute can not be directly observed. In order to estimate the value of each housing characteristic, multiple regression analysis is utilized. Suppose there are i site and

³ There is an extensive literature on how environmental issues (such as air quality, water quality and undesirable land uses) on housing values. For a survey of the literature, see Boyle and Kiel (2001).

⁴ For example, see Mitchell (2000), and Clark and Herrin (2000).

⁵ For example, Colwell, Dehring and Lash (2000) investigate the impact of group homes on neighborhood property values; Carroll, Lauretie and Jensen (1996) study the effects of neighborhood churches on residential property values; and Irwin (2002) examines the influence of open space on residential housing values.

structural attributes, j location characteristics, and k market factors in the hedonic model, the semi-log regression equation can be written as:

$$\ln(P) = \alpha + \sum_{i=1}^i \beta_i S_i + \sum_{j=1}^j \lambda_j L_j + \sum_{k=1}^k \mu_k M_k + \varepsilon \quad (1)$$

where P is the sales price of a house, β , λ and μ are coefficients, and ε is an error term. The coefficient of an attribute is interpreted as the percentage change in property value given one unit increase in the attribute. In this study, a dummy variable is used to identify houses that are covered by Mills Act contracts. The coefficient of this variable represents the effect of historic designation on the value of a house.

4. Data

Data were collected on sales of single-family detached housing in zip codes 92103 and 92104 in San Diego, California from January 1, 2000 through December 31, 2006. The two zip codes were selected for several reasons. They contain some of San Diego's oldest neighborhoods and therefore have a relatively large proportion of historically designated homes. In fact, nearly 40% of the structures that are currently covered by Mills Act contracts in the City of San Diego are located in these two zip codes. The housing stock in the neighborhoods has sufficient variation in physical attributes to allow a meaningful hedonic analysis. Additionally, as these zip codes are contiguous, many of the neighborhood characteristics such as school quality, proximity to downtown and beaches, and crime rates do not vary greatly.

During the seven-year period, 2,045 transactions of single-family residences with valid property information are retrieved from DataQuick's PropertyPro CDs.⁶ To ensure that the data reflects the housing market equilibrium and to prevent coding errors and non-arm's-length transactions from unduly influencing the analysis, a set of data cleansing criteria are utilized.⁷ Approximately 4.5% of the observations are excluded, resulting in a final dataset with 1,953 valid observations. Of these houses, 25 had received historic designation by the City of San Diego and the owners had signed a Mills Act contract.⁸ Table I presents the descriptive statistics for the

⁶ Transactions with missing data (such as sales price, lot size, square footage of living area, number of bathrooms, number of bedrooms, and year built) are excluded.

⁷ An observation is removed if one of the following criteria is met: 1) the year of sale is earlier than the year built, 2) the lot size is greater than an acre or less than 500 square feet, and 3) the number of bedrooms is greater than 5. The price per square foot (p/sf) is also taken into account to prevent coding errors and exclude non-arm's-length transactions. The average p/sf in the two zip codes during the study period is \$432 with a standard deviation of \$134. Observations with p/sf three standard deviations higher (\$834) or lower (\$30) than the average are also removed.

⁸ The 25 properties covered by the Mills Act contracts represent 1.28% of the sample, while historically designated single-family houses in the two zip codes (261 properties) represent 1.24% of the stock of single-family housing.

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dataset, with Panel A showing the historically designated houses and Panel B the rest of the sample.

Table 1 Descriptive Statistics

<i>Panel A Historically Designated Houses (n=25)</i>				
Variable	Mean	Std. Dev.	Min.	Max.
Sales Price (000's)	833.2	365.3	333.0	1,850
No. of Bedrooms	2.87	0.74	2.00	4.00
No. of Bathrooms	1.70	0.64	1.00	3.50
Living Area (ft ²)	1,721.3	587.7	870	3,169
SQ FT of Lot	7,043.1	4,446.1	4,500	24,829
# Garage Spaces	1.14	0.65	0.00	2.00
Avail. of Pool	0.00	0.00	0.00	0.00
Age of Property	68.70	18.91	5.00	93.00

<i>Panel B Non-historically designated houses (n=1,928)</i>				
Variable	Mean	Std. Dev.	Min.	Max.
Sales Price (000's)	569.8	303.9	80.0	2,500
No. of Bedrooms	2.59	0.78	1.00	5.00
No. of Bathrooms	1.60	0.76	1.00	5.00
Living Area (ft ²)	1,367.1	655.1	405	5,790
SQ FT of Lot	5,467.0	3,176.2	649	37,461
# Garage Spaces	1.22	0.72	0.00	5.00
Avail. Pool	0.06	0.24	0.00	1.00
Age of Property	67.01	18.98	0.00	102.00

Somewhat surprisingly, the historically designated houses are not that much older than the other houses, with an average age of 68.7, compared to 67.0 for the rest of the sample. Overall, the historically designated houses are slightly larger (in terms of square footage, number of bedrooms/bathrooms, and lot size) and sell on average for \$263,000 more than those without historic designation.

5. Model and Results

The hedonic model (Equation 1) is estimated with the dataset to determine the implicit price of each housing attribute. In this study, site and structural attributes include the number of bedrooms, the number of bathrooms, the square footage of living area, size of lot, the number of garage spaces, availability of a swimming pool, and the age of the property. To control for neighborhood effects within the two zip codes, a set of 24 dummy variables are employed to represent the census tract in which a property is located. As the San Diego housing market experienced remarkable appreciation during the study period, a group of dummy variables that indicate the quarter in which a transaction occurred is also included to take into account the housing market trend. Additionally, a dummy variable is used to identify houses with historic designation. The value of the variable is one for houses that are covered by Mills Act contracts, and zero otherwise. The coefficient of this variable indicates the impact of historic designation on the value of a house, after other housing attributes have been controlled for.

Table 2 presents the estimation results of two hedonic models.⁹ Model 1 uses the log of sales price as the dependent variable. The model has a strong explanatory power with an adjusted R^2 of 83.2%. Most site and structural variables carry the expected sign and are statistically significant. For example, adding 100 square feet of living space increases the housing value by approximately 2.7%, and each additional bedroom adds 3.2% value to the house. The coefficient of property age is positive, suggesting that buyers in this market are willing to pay more for older houses; however, the difference is not statistically insignificant.

⁹ Due to the large number of variables, parameter estimates of the census tract and quarter dummy variables are not presented in the table, but are available from the authors.

Table 2 Estimation Results of Hedonic Model (n = 1,953)

Variable	Model 1: Semi-log Form	
	Coefficients	t value
Intercept	11.9277	77.92
No. of Bedrooms	0.0317	3.85
No. of Bathrooms	0.0181	1.75
SQ FT of Living Area (10^{-3})	0.2724	18.95
SQ FT of Lot (10^{-3})	0.0076	4.41
No. of Garage Spaces	0.0340	4.86
Availability of Pool	0.0851	4.27
Age of Property (10^{-3})	0.3214	1.11
Historic Designation	0.1484	3.44
Adjusted R ²	0.8322	

Variable	Model 2: Linear Form	
	Coefficients	t value
Intercept	154,431	1.49
No. of Bedrooms	567.70	0.10
No. of Bathrooms	26,669	3.80
SQ FT of Living Area (10^{-3})	220.12	22.64
SQ FT of Lot (10^{-3})	5.88	5.02
No. of Garage Spaces	11,036	2.33
Availability of Pool	82,538	6.12
Age of Property (10^{-3})	102.71	0.53
Historic Designation	120,985	4.15
Adjusted R ²	0.7995	

The variable of interest is the dummy variable for Mills Act historic designation. The variable has a coefficient of 0.1484 and a t-value of 3.44. This result reveals

that historic designation and the corresponding Mills Act contract increase the value of a single-family home by approximately 16.0%.¹⁰

A number of additional tests are performed to assess the robustness of the empirical results. The variance inflation factor (VIF) is used to ensure that the estimation results are not affected by multicollinearity. Several different model specifications (for example, log and quadratic forms for property age and lot size) are also considered. The magnitude and significance level of the Mills Act variable remains virtually unchanged. Additionally, a linear form regression (where the sales price is the dependent variable) is estimated. The coefficient of the Mills Act variable is again positive and highly significant (see Model 2 in Table 2). These tests confirm that with physical attributes, housing market trends, and neighborhood effects all controlled for, the historic designation significantly increases the value of a property.

6. Conclusion

The State of California enacted the Mills Act in 1972. This program provides owners of historic buildings a reduction in property taxes in return for an agreement to not alter the exterior façade of the designated building. This paper studies the impact of such historic designation on the value of single-family homes. Using hedonic regression analysis and housing transactions in San Diego between 2000 and 2006, the study estimates the price differential between houses with Mills Act historic designation and comparable houses without the designation. The empirical findings suggest that the historic designation results in a 16 percent increase in housing value.

Theory suggests that the value of any tax benefits should be capitalized into the price of the home. The degree to which this benefit is not fully capitalized represents a cost to the homeowner for agreeing not to alter the building; on the other hand, a price differential exceeding the capitalized tax benefit implies value in the historic designation itself. In San Diego the tax savings on houses that are covered by Mills Act contracts range from 40 to 80 percent, with an average of 49 percent. Given a one-percent property tax rate, the price differential identified in the empirical analysis is likely to be higher than the capitalization of property tax savings. Further research with more detailed data is necessary to investigate the sources of the additional value.

The importance of historic preservation has received growing international recognition and many countries have developed programs to provide tax incentives. Traditional approaches have consisted primarily of either public ownership of the structures or the creation of historic districts. California's approach to historic preservation through the Mills Act provides an alternative model. Communities

¹⁰ For a dummy variable, the percentage effect is equal to $(\text{Exp}(c)-1)$, where c is the parameter estimate of the dummy variable (see Halvorsen and Palmquist, 1980).

gain by making sure historically significant structures are preserved while the owners of those structures are compensated with tax savings and higher property values. The level of participation in the Mills Act program indicates that it has been successful in encouraging the owners of historically significant structures to preserve and maintain their buildings. The Mills Act can therefore serve as a template of how historic preservation may be achieved elsewhere in the United States as well as internationally.

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